Vol. 44—No. 43
3-2-79
PAGES
11729-12015

federal register

FRIDAY, MARCH 2, 1979

highlights

CONTINUED INSIDE

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA//FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

***NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)**

federal register

Area Code 202 Phone 523-5240

Published daily, Monday through Friday (no publication on Saturdays, Sundays, or on official Federal holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C., Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The FEDERAL REGISTER provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $5.00 per month or $50 per year, payable in advance. The charge for individual copies is 75 cents for each issue, or 75 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing **202-523-5240.**

FEDERAL REGISTER, Daily Issue:

Subscription orders (GPO)	202-783-3238
Subscription problems (GPO)	202-275-3054
"Dial - a - Reg" (recorded summary of highlighted documents appearing in next day's issue).	
Washington, D.C.	202-523-5022
Chicago, Ill	312-663-0884
Los Angeles, Calif	213-688-6694
Scheduling of documents for publication.	202-523-3187
Photo copies of documents appearing in the Federal Register.	523-5240
Corrections	523-5237
Public Inspection Desk	523-5215
Finding Aids	523-5227
Public Briefings: "How To Use the Federal Register."	523-5235
Code of Federal Regulations (CFR)	523-3419 523-3517
Finding Aids	523-5227

PRESIDENTIAL PAPERS:

Executive Orders and Proclamations.	523-5233
Weekly Compilation of Presidential Documents.	523-5235
Public Papers of the Presidents	523-5235
Index	523-5235

PUBLIC LAWS:

Public Law numbers and dates	523-5266 523-5282
Slip Law orders (GPO)	275-3030
U.S. Statutes at Large	523-5266 523-5282
Index	523-5266 523-5282
U.S. Government Manual	523-5230
Automation	523-3408
Special Projects	523-4534

HIGHLIGHTS—Continued

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list, has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

Rules Going Into Effect March 4, 1979

Labor/OSHA—Occupational exposure to cotton dust; cotton waste processors and users, lifting of administrative stay 5438; 1-26-79

List of Public Laws

NOTE: No public laws have been received by the Office of the Federal Register for assignment of law numbers and inclusion in today's listing.

[Last Listing Jan. 24, 1979]

contents

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

3 CFR

EXECUTIVE ORDERS:

11888 (Amended by EO 12124) .. 11729
12124 11729

5 CFR

300 11996
536 11741

7 CFR

907 11745
910 11746
959 11746

PROPOSED RULES:

800 11923
802 11982
803 11984
929 11785

9 CFR

82 11748

10 CFR

35 11749

12 CFR

226 11749
261b 11750

PROPOSED RULES:

701 11785

13 CFR

120 11750

PROPOSED RULES:

108 11787

17 CFR

240 11751

20 CFR

901 11751

21 CFR

131 11752
310 11753
522 11754
610 11754

PROPOSED RULES:

436 11788
455 11789
555 11789

23 CFR

630 11754

24 CFR

300 11755
1917 (6 documents) 11755-11758

26 CFR

PROPOSED RULES:

1 11789
20 11791
25 11791

27 CFR

PROPOSED RULES:

47 11795
178 11795
179 11795

28 CFR

50 11996
301 11759

PROPOSED RULES:

Ch. I 11804

29 CFR

1607 11996
1952 11760
2510 11761

30 CFR

Ch. VII 11795

31 CFR

51 11996
500 11764
515 11768
520 11771

32 CFR

246 11774
575 11781

40 CFR

PROPOSED RULES:

52 (2 documents) 11798
86 11802

41 CFR

60-3 11996

43 CFR

PROPOSED RULES:

4 11803

45 CFR

PROPOSED RULES:

234 11803

49 CFR

1033 11783
1124 11783

CUMULATIVE LIST OF CFR PARTS AFFECTED DURING MARCH

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during March.

1 CFR

Ch I 11517

3 CFR

EXECUTIVE ORDERS:
11888 (Amended by EO 12124) .. 11729
12124 11729

5 CFR

300 11996
536 11741

7 CFR

907 11745
910 11746
959 11746
971 11517
2900 11518

PROPOSED RULES:
800 11923
802 11982
803 11984
929 11785
1402 11555

9 CFR

82 11748

10 CFR

35 11749

12 CFR

226 11749
261b 11750

PROPOSED RULES:
701 11785

13 CFR

120 11750

PROPOSED RULES:
108 11787

14 CFR

39 (4 documents) 11527, 11528
71 (8 documents) 11530-11534
73 (3 documents) 11532, 11535
97 11536

PROPOSED RULES:
71 (6 documents) 11555-11558
73 11559

16 CFR

PROPOSED RULES:
13 (2 documents) 11560
436 11565

17 CFR

240 11751
241 11537
250 11541
256 11541

20 CFR

901 11751

21 CFR

131 11752
310 11753
522 11754
610 11754

PROPOSED RULES:
436 11788
455 11789
555 11789

23 CFR

630 ..... 11541, 11754
655 11543
661 11542
924 11543

24 CFR

300 11755
1917 (6 documents) 11755-11758

PROPOSED RULES:
880 11566
881 11566
883 11566

26 CFR

PROPOSED RULES:
1 11789
20 11791
25 11791

27 CFR

PROPOSED RULES:
47 11795
178 11795
179 11795

28 CFR

50 11996
301 11759

PROPOSED RULES:
Ch. I 11804

29 CFR

1607 11996
1952 11760
2510 11761

30 CFR

Ch. VII 11795

31 CFR

51 11996
500 11764
515 11768
520 11771

32 CFR

246 11774
575 11781

33 CFR

165 11546

PROPOSED RULES:
117 11566
157 11567

40 CFR

440 11546

PROPOSED RULES:
52 11798
86 11802

41 CFR

60-3 11996

43 CFR

PROPOSED RULES:
4 11803

45 CFR

PROPOSED RULES:
119 11567
120 11567
134 11567
166 11567
234 11803

46 CFR

531 11547
536 11547

47 CFR

PROPOSED RULES:
73 (2 documents) 11568

49 CFR

230 11547
531 11548
571 11549
573 11551
1033 11783
1124 11783
1245 11551
1246 11551

PROPOSED RULES:
Ch I-VI 11674
171 11569
172 11569
173 11569
174 11569
175 11569
176 11569
177 11569
581 11569

50 CFR

PROPOSED RULES:
651 11571

FEDERAL REGISTER PAGES AND DATES—MARCH

Pages	*Date*
11517-11727	Mar. 1
11729-12015	2

presidential documents

Title 3—
The President

Executive Order 12124 of February 28, 1979

Amending the Generalized System of Preferences

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Title V and Section 604 of the Trade Act of 1974 (88 Stat. 2066, 19 U.S.C. 2461 *et seq.;* 88 Stat. 2073, 19 U.S.C. 2483), and as President of the United States of America, in order to modify, as provided by Section 504(c) of the Trade Act of 1974 (88 Stat. 2070, 19 U.S.C. 2464(c)), the limitations on preferential treatment for eligible articles from countries designated as beneficiary developing countries, and to adjust the original designation of eligible articles taking into account information and advice received in fulfillment of Sections 503(a) and 131–134 of the Trade Act of 1974 (88 Stat. 2069, 19 U.S.C. 2463(a); 88 Stat. 1994, 19 U.S.C. 2151–2154), it is hereby ordered as follows:

SECTION 1. In order to subdivide existing items for purposes of the Generalized System of Preferences (GSP), the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) are modified as provided in Annex I, attached hereto and made a part hereof.

SECTION 2. Annex II of Executive Order No. 11888 of November 24, 1975, as amended, listing articles that are eligible for benefits of the GSP when imported from any designated beneficiary developing country, is further amended as provided in Annex II, attached hereto and made a part hereof.

SECTION 3. Annex III of Executive Order No. 11888, as amended, listing articles that are eligible for benefits of the GSP when imported from all designated beneficiary countries except those specified in General Headnote 3(c) (iii) of the TSUS, is amended by substituting therefor the new Annex III, attached hereto and made a part hereof.

SECTION 4. General Headnote 3(c)(iii) of the TSUS, listing articles that are eligible for benefits of the GSP except when imported from the beneficiary countries listed opposite those articles, is amended by substituting therefor the new Annex IV, attached hereto and made a part hereof.

SECTION 5. General Headnote 3(c)(i) of the TSUS is modified—

(i) by adding, in alphabetical order, to the list of independent designated beneficiary developing countries for the purposes of the Generalized System of Preferences "Comoros", "Djibouti", and "Seychelles"; and by deleting from the list of non-independent designated beneficiary developing countries and territories "Comoro Islands", "French Territory of the Afars and Issas", and "Seychelles."

(ii) by deleting from the list of independent designated beneficiary developing countries "Central African Republic", "Congo (Brazzaville)", "Maldive Islands", and "Republic of China", and by substituting therefor, in alphabetical order, "Central African Empire", "Congo", "Maldives", and "Taiwan", respectively.

(iii) by deleting from the list of non-independent designated beneficiary developing countries "Falkland Islands (Malvinas) and Dependencies", "Pit-

cairn Island", and "Spanish Sahara", and by substituting therefor, in alphabetical order, "Falkland Islands (Islas Malvinas)", "Pitcairn Islands", and "Western Sahara", respectively.

(iv) by deleting from the list of non-independent designated beneficiary developing countries "Portuguese Timor."

SECTION 6. The amendments made by this Order shall be effective with respect to articles that are both: (1) imported on or after January 1, 1976, and (2) entered, or withdrawn from warehouse, for consumption on or after March 1, 1979.

SECTION 7. Effective March 1, 1980, Annex II to Executive Order 11888, as amended, is further amended by deleting item 652.97, TSUS.

THE WHITE HOUSE,
February 28, 1979.

Jimmy Carter

ANNEX I

GENERAL MODIFICATIONS OF THE TARIFF SCHEDULES OF THE UNITED STATES

NOTES:

1. Bracketed matter is included to assist in the understanding of the ordered modifications.

2. The following items, with or without preceding superior descriptions, supersede matter now in the Tariff Schedules of the United States (TSUS). The items and superior descriptions are set forth in columnar form and material in such columns is inserted in the columns of the TSUS designated "Item", "Articles", "Rates of Duty 1", and "Rates of Duty 2", respectively.

Subject to the above notes the TSUS is modified as follows:

1. Item 361.20 is superseded by:

	[Floor coverings . . .:]		
	[Other:]		
"361.21	With over 50 percent by weight of the fibers, exclusive of any core, being jute.....	8% ad val.	35% ad val.
361.22	Other.....	8% ad val.	35% ad val."

2. Item 386.08 is superseded by:

	[Articles not specially provided for, of textile materials:]		
	[Lace or net articles . . .:]		
"386.06	Of wool.....	25% ad val.	90% ad val.
	Other:		
386.07	Shoe uppers.....	25% ad val.	90% ad val.
386.09	Other.....	25% ad val.	90% ad val."

3. Item 387.30 is superseded by:

	[Articles not specially provided for, of textile materials:]		
	[Other articles, not ornamented:]		
	[Of vegetable fibers, except cotton:]		
	"Other:		
387.32	Of jute.....	6.5% ad val.	40% ad val.
387.34	Other.....	6.5% ad val.	40% ad val."

4. Item 648.81 is superseded by:

	[Pliers, nippers, and pincers . . .:]		
	[Pliers, nippers, and pincers . . .:]		
	"Slip-joint pliers:		
648.80	Not forged, valued not over $6 per dozen.....	20% ad val.	60% ad val.
648.82	Other.....	20% ad val.	60% ad val."

5. Item 652.98 is superseded by:

	[Hangars and other buildings, bridges, bridge sections . . .:]		
	"Other:		
652.97	Offshore oil and natural gas drilling and production platforms.....	9.5% ad val.	45% ad val.
652.99	Other.....	9.5% ad val.	45% ad val."

6. Items 653.49 and 653.51 are superseded by:

	[Stoves, central-heating furnaces . . .:]		
"653.48	Stoves (except hibachis) wholly or almost wholly of cast-iron, and parts thereof wholly or almost wholly of cast-iron	6% ad val.	45% ad va..
653.52	Other	6% ad val.	45% ad val.'

7. Item 635.32 is superseded by:

	[Radiotelegraphic and radiotelephonic . . .:]		
	"Record players, phonographs, record changers, turntables, and tone arms, and parts of the foregoing:		
685.34	Tone arms and parts thereof	5.5% ad val.	35% ad val.
685.36	Other	5.5% ad val.	35% ad val."

8. Item 731.60 is superseded by:

	"Equipment designed for sport fishing, fishing tackle, and parts of such equipment and tackle, all the foregoing not specially provided for:		
731.65	Artificial baits and flies	12.5% ad val.	55% ad val.
731.70	Other	12.5% ad val.	55% ad val."

9.(a) Item 732.37 is superseded by:

	[Parts of bicycles:]		
"732.38	Three speed hubs whether or not incorporating a coaster brake; caliper brakes; multiple free-wheel sprockets	15% ad val.	30% ad val.
732.39	Other parts of bicycles	15% ad val.	30% ad val."

(b) Conforming change: Item 912.10 is modified by deleting "and 732.37" and substituting ", 732.38, and 732.39" in lieu thereof.

10. Item 791.25 is superseded by:

	[Leather cut or wholly or partly . . .:]		
	"Other:		
791.24	Uppers lasted or otherwise fabricated with midsoles or insoles	5% ad val.	15% ad val.
791.26	Other	5% ad val.	15% ad val."

ANNEX II

-1-

Annex II to Executive Order No. 11888, as amended by Executive Orders Nos. 11906, 11934, 11974, 12032, 12041, and 12104 and Proclamation Nos. 4561 and 4632 is amended—

(a) by deleting the following TSUS item numbers:

106.70	254.56	610.66	702.47
107.48	254.58	610.71	706.47
107.65	304.40	612.40	708.57
107.80	304.58	622.40	708.91
121.15	308.35	632.60	710.36
121.55	308.55	646.82	722.55
121.56	355.20	650.83	724.35
146.12	364.14	650.89	725.32
147.36	365.05	651.13	726.90
148.25	408.40	651.45	731.10
152.54	417.22	651.51	731.30
152.58	418.24	651.62	731.50
154.40	418.78	652.98	731.60
154.55	420.78	653.25	732.62
161.53	420.98	653.51	734.20
161.69	422.24	657.30	735.09
162.11	426.34	660.42	737.35
177.12	427.08	676.20	740.75
200.06	427.16	680.52	741.15
200.91	437.24	680.54	748.15
220.50	455.16	682.60	748.40
222.34	455.30	683.15	751.15
240.10	460.60	684.10	756.40
240.12	465.15	684.70	760.38
240.21	473.32	685.40	774.35
240.30	473.50	686.24	790.07
240.34	522.71	687.30	790.59
240.50	531.21	688.30	791.17
240.56	544.11	696.10	
245.00	545.31	696.50	
245.20	546.21	702.14	
252.25	603.45	702.20	

(b) by adding in numerical sequence, the following TSUS item numbers:

112.94	361.21	603.50	652.99
113.50	366.84	607.65	653.30
131.35	370.17	612.02	653.52
136.98	386.09	612.60	680.53
140.09	387.32	612.63	680.54
140.14	403.40	622.25	680.55
140.55	405.45	624.40	680.56
145.52	407.12	624.42	685.34
149.15	417.20	624.50	688.20
153.02	419.00	628.40	700.54
153.03	420.02	628.50	702.08
153.28	420.82	629.26	702.25
156.35	426.12	642.08	702.40
156.45	427.60	643.14	710.34
161.75	445.20	644.28	711.30
166.30	460.35	646.04	713.17
176.15	460.70	646.88	723.32
176.70	470.15	646.89	728.20
182.10	473.62	648.80	730.77
188.34	473.78	648.89	731.70
204.40	490.30	649.71	732.38
222.44	494.40	649.89	734.40
222.62	514.44	650.15	734.42
240.38	515.54	650.21	734.54
240.40	517.21	650.31	748.20
240.58	517.24	650.45	750.32
254.63	520.39	650.56	771.45
306.53	540.47	650.79	773.20
306.71	545.35	651.33	790.60
308.51	546.23	651.49	791.20
308.80	601.54	652.93	791.26
337.20	602.30	652.97	791.70
			792.30

ANNEX III

-1-

TSUS Item Number

106.70	148.72	222.10	365.05
107.48	148.77	222.34	389.61
107.65	149.50	240.02	403.58
107.80	152.43	240.10	403.79
114.05	152.54	240.12	403.40
121.15	152.58	240.16	403.75
121.52	154.40	240.19	416.05
121.55	154.55	240.21	417.22
121.56	155.20	240.30	418.24
130.35	155.35	240.34	418.78
130.40	156.40	240.50	420.78
135.51	161.53	240.56	420.98
135.80	161.69	245.00	422.24
135.90	162.11	245.20	422.76
136.00	168.15	252.25	425.84
136.30	176.33	254.56	426.34
136.80	177.12	254.58	427.08
136.92	177.72	256.60	427.16
137.40	182.90	256.85	437.16
137.71	184.65	304.04	437.24
137.75	186.20	304.40	437.64
138.05	186.40	304.44	446.10
140.21	190.68	304.48	455.16
140.25	192.85	304.58	455.30
141.35	200.06	305.22	460.60
141.55	200.91	305.28	461.15
141.70	202.40	305.30	465.15
141.77	202.62	305.52	465.70
145.08	203.20	308.30	466.05
145.53	206.45	308.35	473.32
145.60	206.47	308.50	473.50
146.12	206.60	308.55	473.52
146.22	206.98	319.01	473.56
146.44	220.10	319.03	473.82
147.33	220.15	319.05	493.21
147.36	220.20	319.07	511.31
147.80	220.25	335.50	514.11
147.85	220.35	347.30	514.54
147.88	220.37	355.04	516.24
148.12	220.41	359.20	516.71
148.25	220.48	360.35	516.73
148.35	220.50	364.14	

ANNEX III

-2-

TSUS Item Number

516.74	653.25	702.20	737.30
516.76	653.47	702.45	737.35
518.41	653.48	702.47	737.50
520.35	653.70	703.20	737.80
522.71	653.85	703.65	737.95
531.21	653.93	703.75	740.10
533.26	657.24	704.34	740.30
535.31	657.30	706.40	740.34
544.11	660.42	706.47	740.38
545.31	660.44	708.57	740.75
545.37	662.18	708.91	741.15
545.53	662.35	710.36	741.20
545.65	672.10	713.15	741.50
545.81	674.56	713.19	745.08
545.85	676.20	722.55	748.12
546.21	676.23	724.35	748.15
547.41	676.52	725.32	748.40
603.45	678.50	726.70	750.05
610.66	682.60	726.90	750.35
610.71	683.15	727.31	751.05
612.03	683.70	730.25	751.10
612.06	683.80	730.27	751.15
612.15	684.10	730.29	751.20
612.40	684.50	730.41	756.40
613.15	684.70	731.10	760.38
622.40	685.24	731.30	760.65
626.22	685.40	731.50	772.03
632.60	685.90	732.62	772.35
646.82	686.24	734.10	772.51
646.86	686.30	734.20	772.97
646.98	687.30	734.25	773.10
649.75	688.10	734.30	774.35
650.83	688.12	734.34	774.60
650.87	688.30	734.51	790.07
650.89	688.40	734.56	790.39
651.01	690.15	734.60	790.59
651.13	692.27	734.75	790.61
651.45	696.10	734.87	790.62
651.51	696.35	735.09	790.70
651.62	696.50	735.11	791.17
652.84	702.14	735.20	791.80
653.02	702.15	737.25	792.50
			792.60
			792.75

ANNEX IV

-1-

"(iii) The following designated eligible articles provided for in TSUS item numbers preceded by the designation "A*", if imported from a beneficiary developing country set opposite the TSUS item numbers listed below, are not entitled to the duty-free treatment provided for in subdivision (c)(ii) of this headnote:

TSUS item No.	Country or territory
106.70	Mexico
107.48	Argentina
107.65	Bangladesh
107.80	Argentina
114.05	Republic of Korea
121.15	Mexico
121.52	India
121.55	India
121.56	Argentina
130.35	Argentina
130.40	Mexico
135.51	Mexico
135.80	Nicaragua
135.90	Mexico
136.00	Dominican Republic
136.30	Mexico
136.80	Mexico
136.92	Israel
137.40	Mexico
137.71	Mexico
137.75	Costa Rica
138.05	Mexico
140.21	Mexico
140.25	Mexico
141.35	Turkey
141.55	Dominican Republic
141.70	Taiwan
141.77	Mexico
145.08	Philippine Republic
145.53	Turkey
145.60	Taiwan
146.12	Argentina
146.22	Turkey
146.44	Philippine Republic
147.33	Jamaica
147.36	Israel
147.80	Mexico
147.85	Brazil
147.88	Mexico
148.12	Mexico
148.25	Mexico
148.35	Mexico
148.72	Chile
148.77	Republic of Korea
149.50	Mexico
152.43	Dominican Republic
152.54	Brazil
152.58	India
154.40	Taiwan
154.55	Taiwan
155.20	(Argentina (Brazil (Colombia (Dominican Republic (El Salvador (Guatemala (Guyana (India (Jamaica (Nicaragua (Panama (Peru (Philippine Republic (Taiwan (Thailand
155.35	Barbados
156.40	(Brazil (Ivory Coast
161.53	Egypt
161.69	Mexico
162.11	Syria
168.15	Trinidad
176.33	Malaysia
177.12	Panama
177.72	Cayman Islands
182.90	Panama
184.65	Taiwan
185.20	Brazil
186.40	Mexico
190.68	Mexico

ANNEX IV

-2-

TSUS item No.	Country or territory
192.85	Mexico
200.06	Hong Kong
200.91	Honduras
202.40	Philippine Republic
202.62	Mexico
203.20	Malaysia
206.45	Philippine Republic
206.47	Taiwan
206.60	Mexico
206.98	Taiwan
220.10	Portugal
220.15	Portugal
220.20	Portugal
220.25	Portugal
220.35	Portugal
220.37	Portugal
220.41	Portugal
220.48	Portugal
220.50	Portugal
222.10	Hong Kong
222.34	Philippine Republic
240.02	Philippine Republic
240.10	Nicaragua
240.12	Brazil
240.16	Taiwan
240.19	Taiwan
240.21	Mexico
240.30	Mexico
240.34	Taiwan
240.50	Taiwan
240.56	Honduras
245.00	Romania
245.20	Brazil
252.25	Argentina
254.56	Hong Kong
254.58	Hong Kong
256.60	Republic of Korea
256.85	Mexico
304.04	Philippine Republic
304.40	Thailand
304.44	Brazil
304.48	Kenya
304.58	India
305.22	India
305.28	Thailand
305.30	Thailand
306.52	Peru
308.30	Brazil
308.35	Hong Kong
308.50	Republic of Korea
308.55	Republic of Korea
319.01	India
319.03	India
319.05	India
319.07	India
335.50	India
347.30	India
355.04	Mexico
355.20	Taiwan
360.35	India
364.14	Haiti
365.05	Haiti
389.61	Hong Kong
403.58	Israel
403.79	Mexico
408.40	Mexico
408.75	Romania
416.05	Mexico
417.22	Mexico
418.24	India
418.78	Mexico
420.78	Turkey
420.98	Brazil
422.24	Mexico
422.76	Mexico
425.84	Netherlands Antilles
426.34	Taiwan
427.08	Hong Kong
427.16	Argentina
437.16	India
437.24	Brazil
437.64	Brazil
446.10	Malaysia

ANNEX IV

-3-

TSUS item No.	Country or territory
455.16	Taiwan
455.30	Israel
460.60	India
461.15	Bermuda
465.15	Cayman Islands
465.70	Argentina
466.05	Jamaica
473.32	Cyprus
473.50	Mexico
473.52	Mexico
473.56	Mexico
473.82	Republic of Korea
493.21	Taiwan
511.31	Mexico
514.11	Dominican Republic
514.54	Mexico
516.24	India
516.71	India
516.73	India
516.74	India
516.76	India
518.41	Mexico
520.35	Thailand
522.71	Somalia
531.21	Mexico
533.26	Romania
535.31	Mexico
544.11	Romania
545.31	Taiwan
545.37	Taiwan
545.53	Mexico
545.65	Mexico
545.81	India
545.85	Taiwan
546.21	Taiwan
547.41	Hong Kong
603.45	Republic of Korea
610.66	Israel
610.71	Israel
612.03	(Chile
	(Peru
	(Chile
612.06	(Peru
	(Zambia
612.15	Mexico
612.40	Cayman Islands
613.15	Mexico
622.40	Brazil
626.22	Peru
632.60	Peru
646.82	Taiwan
646.86	Hong Kong
646.98	Mexico
649.75	Taiwan
650.83	Hong Kong
650.87	Hong Kong
650.89	Hong Kong
651.01	Hong Kong
651.13	Hong Kong
651.45	Taiwan
651.51	Hong Kong
651.62	Peru
652.84	Mexico
653.02	Mexico
653.25	Peru
653.47	(Republic of Korea
	(Taiwan
653.48	Taiwan
653.70	Hong Kong
653.85	Taiwan
653.93	Taiwan
657.24	Taiwan
657.30	Taiwan
660.42	Brazil
660.44	Mexico
662.18	Republic of Korea
662.35	Mexico
672.10	Hong Kong
674.56	Mexico
676.20	Taiwan
676.23	Argentina
676.52	(Hong Kong
	(Mexico
	(Hong Kong
678.50	(Republic of Korea
	(Taiwan
682.60	Mexico
683.15	Mexico
683.70	Hong Kong
683.80	Hong Kong
684.10	Taiwan
684.50	Hong Kong
684.70	Taiwan

ANNEX IV

-4-

TSUS item No.	Country or territory
	(Hong Kong
685.24	(Republic of Korea
	(Singapore
	(Taiwan
685.40	Republic of Korea
685.90	Mexico
686.24	El Salvador
686.30	Taiwan
687.30	Malaysia
688.10	Taiwan
688.12	Mexico
688.30	Republic of Korea
688.40	Hong Kong
690.15	Mexico
692.27	Mexico
696.10	Taiwan
696.35	Taiwan
696.50	Brazil
702.14	Republic of Korea
702.15	Taiwan
702.20	Republic of Korea
702.45	Mexico
702.47	Mexico
703.20	Portugal
703.65	Mexico
703.75	Mexico
704.34	Taiwan
706.40	Hong Kong
706.47	Taiwan
708.57	Republic of Korea
708.91	Republic of Korea
710.36	Republic of Korea
713.15	Mexico
713.19	Mexico
722.55	Hong Kong
724.35	Republic of Korea
725.32	Taiwan
726.70	Mexico
726.90	Mexico
727.31	Republic of Korea
730.25	Turkey
730.27	Philippine Republic
730.29	Brazil
730.41	Brazil
731.10	Taiwan
731.30	Taiwan
731.50	Taiwan
732.62	Taiwan
734.10	Taiwan
734.20	Hong Kong
734.25	Hong Kong
734.30	Hong Kong
734.34	Hong Kong
734.51	Taiwan
734.56	Haiti
734.60	Taiwan
734.75	Republic of Korea
734.87	Taiwan
735.09	Taiwan
735.11	Taiwan
735.20	Taiwan
737.25	Republic of Korea
737.30	Republic of Korea
737.35	Hong Kong
737.50	Hong Kong
737.80	Hong Kong
737.95	(Hong Kong
	(Taiwan
740.10	Hong Kong
740.30	Hong Kong
740.34	Hong Kong
740.38	Hong Kong
740.75	Republic of Korea
741.15	Taiwan
741.20	Hong Kong
741.50	Hong Kong
745.08	Hong Kong
748.12	Haiti
748.15	Taiwan
748.40	Republic of Korea
750.05	Hong Kong
750.35	Taiwan
751.05	Taiwan
751.10	India
751.15	Taiwan
751.20	Taiwan
756.40	Hong Kong
760.38	Mexico
760.65	Taiwan
772.03	Hong Kong
772.35	Taiwan
772.51	Republic of Korea
772.97	Hong Kong
773.10	Hong Kong
774.35	Taiwan
774.60	(Hong Kong
	(Taiwan
790.07	Hong Kong
790.39	Taiwan
790.59	Taiwan
790.61	Taiwan
790.62	Taiwan
790.70	Republic of Korea
791.17	Argentina
791.80	Taiwan
792.50	Philippine Republic
792.60	Hong Kong
792.75	Hong Kong"

[FR Doc. 79-6543
Filed 2-28-79; 4:30 pm]

Billing code 3195-01-M

rules and regulations

[6325-01-M]

Title 5—Administrative Personnel

CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT

PART 536—GRADE AND PAY RETENTION

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with comments invited for consideration in final rulemaking.

SUMMARY: We are providing interim regulations for the implementation of the grade and pay retention amendments contained in title VIII of the Civil Service Reform Act of 1978.

DATES: Effective Date: First day of the first applicable pay period beginning on or after January 11, 1979 and until final regulations are issued. Comment Date: May 1, 1979.

ADDRESS: Send written comments to: Mr. Raymond C. Weissenborn, Office of Personnel Management, Room 3353, 1900 E Street, N.W., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT:

Roger J. Menke, 202-632-5604.

SUPPLEMENTARY INFORMATION: Pursuant to section 553(d)(3) title 5, U.S.C., the Director finds that good cause exists for making this amendment effective in less than 30 days, in order to provide continuity of operations and to give immediate and timely effect to the appropriate provisions of the Civil Service Reform Act of 1978.

Section 536.202 of these regulations provides for grade retention to employees who decline an offer to transfer with their function to a location outside their commuting area, presuming the employee is then placed in a lower graded position. This represents the only extension of grade retention coverage by the Office of Personnel Management under the authority granted it by section 5365(b)(3) of title VIII. The authorization is recognized as potentially controversial and, therefore, comment on this issue is specifically requested.

The Office of Personnel Management is adding Part 536 to Title 5 of the Code of Federal Regulations as set forth below:

Subpart A—Statutory Requirements

Subpart B—Regulatory Provisions of the Office of Personnel Management

AUTHORITY: 5 U.S.C. 5361-5366.

Subpart A—Statutory Requirements

§ 536.101 Statutory requirements.

This subpart sets forth the statutory requirements governing grade and pay retention.

§ 536.102 Section 5361 of title 5, United States Code.

Section 5361 of title 5, United States Code provides:

"§ 5361. Definitions.

"For the purpose of this subchapter—

"(1) 'employee' means an employee to whom chapter 51 of this title applies, and a prevailing rate employee, as defined by section 5342(a)(2) of this title, whose employment is other than on a temporary or term basis;

"(2) 'agency' has the meaning given it by section 5102 of this title;

"(3) 'retained grade' means the grade used for determining benefits to which an employee to whom section 5362 of this title applies is entitled;

"(4) 'rate of basic pay' means, in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343 of this title;

"(5) 'covered pay schedule' means the General Schedule, any prevailing rate schedule established under subchapter IV of this chapter, or the merit pay system under chapter 54 of this title;

"(6) 'position subject to this subchapter' means any position under a covered pay schedule; and

"(7) 'reduction-in-force procedures' means procedures applied in carrying out any reduction in force due to a reorganization, due to lack of funds or curtailment of work, or due to any other factor.

§ 536.103 Section 5362 of title 5, United States Code.

Section 5362 of title 5, United States Code provides:

"§ 5362. Grade retention following a change of positions or reclassification.

"(a) Any employee—

"(1) who is placed as a result of reduction-in-force procedures from a position subject to this subchapter to another position which is subject to this subchapter and which is in a lower grade than the previous position, and

"(2) who has served for 52 consecutive weeks or more in one or more positions subject to this subchapter at a grade or grades higher than that of the new position, is entitled, to the extent provided in subsection (c) of this section, to have the grade of the position held immediatley before such

placement be considered to be the retained grade of the employee in any position he holds for the 2-year period beginning on the date of such placement.

"(b)(1) Any employee who is in a position subject to this subchapter and whose position has been reduced in grade is entitled, to the extent provided in subsection (c) of this section, to have the grade of such position before reduction be treated as the retained grade of such employee for the 2-year period beginning on the date of the reduction in grade.

"(2) The provisions of paragraph (1) of this subsection shall not apply with respect to any reduction in the grade of a position which had not been classified at the higher grade for a continuous period of at least one year immediately before such reduction.

"(c) For the 2-year period referred to in subsections (a) and (b) of this section, the retained grade of an employee under such subsection (a) or (b) shall be treated as the grade of the employee's position for all purposes (including pay and pay administration under this chapter and chapters 54 and 55 of this title, retirement and life insurance under chapters 83 and 87 of this title, and eligibility for training and promotion under this title) except—

"(1) for purposes of subsection (a) of this section,

"(2) for purposes of applying any reduction-in-force procedures,

"(3) for purposes of determining whether the employee is covered by the merit pay system established under section 5402 of this title, or

"(4) for such other purposes as the Office of Personnel Management may provide by regulation.

"(d) The foregoing provisions of this section shall cease to apply to an employee who—

"(1) has a break in service of one workday or more;

"(2) is demoted (determined without regard to this section) for personal cause or at the employee's request;

"(3) is placed in, or declines a reasonable offer of, a position the grade of which is equal to or higher than the retained grade; or

"(4) elects in writing to have the benefits of this section terminate.

§ 536.104 Section 5363 of title 5, United States Code.

Section 5363 of title 5, United States Code provides:

"§ 5363. Pay retention.

"(a) Any employee—

"(1) who ceases to be entitled to the benefits of section 5362 of this title by reason of the expiration of the 2-year period of coverage provided under such section;

"(2) who is in a position subject to this subchapter and who is subject to a reduction or termination of a special rate of pay established under section 5303 of this title; or

"(3) who is in a position subject to this subchapter and who (but for this section) would be subject to a reduction in pay under circumstances prescribed by the Office of Personnel Management by regulation to warrant the application of this section; is entitled to basic pay at a rate equal to (A) the employee's allowable former rate of basic pay, plus (B) 50 percent of the amount of each increase in the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay if such allowable former rate exceeds such maximum rate for such grade.

"(b) For the purpose of subsection (a) of this section, 'allowable former rate of basic pay' means the lower of—

"(1) the rate of basic pay payable to the employee immediately before the reduction in pay; or

"(2) 150 percent of the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay.

"(c) The preceding provisions of this section shall cease to apply to an employee who—

"(1) has a break in service of one workday or more;

"(2) is entitled by operation of this subchapter or chapter 51, 53, or 54 of this title to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under this section; or

"(3) is demoted for personal cause or at the employee's request.

§ 536.105 Section 5364 of title 5, United States Code.

Section 5364 of title 5, United States Code provides:

"§ 5364. Remedial actions

"Under regulations prescribed by the Office of Personnel Management, the Office may require any agency—

"(1) to report to the Office information with respect to vacancies (including impending vacancies);

"(2) to take such steps as may be appropriate to assure employees receiving benefits under section 5362 or 5363 of this title have the opportunity to obtain necessary qualifications for the selection to positions which would minimize the need for the application of such sections;

"(3) to establish a program under which employees receiving benefits under section 5362 or 5363 of this title are given priority in the consideration for or placement in positions which are equal to their retained grade or pay; and

"(4) to place certain employees, notwithstanding the fact their previous position was in a different agency, but only in circumstances in which the Office determines the exercise of such authority is necessary to carry out the purpose of this section.

§ 536.106 Section 5365 of title 5, United States Code.

Section 5365 of title 5, United States Code provides:

"§ 5365. Regulations

"(a) The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

"(b) Under such regulations, the Office may provide for the application of all or portions of the provisions of this subchapter—

"(1) to any individual reduced to a grade of a covered pay schedule from a position not subject to this subchapter;

"(2) to individuals to whom such provisions do not otherwise apply; and

"(3) to situations the application to which is justified for purposes of carrying out the mission of the agency or agencies involved.

§ 536.107 Section 5366 of title 5, United States Code.

Section 5366 of title 5, United States Code provides:

"§ 5366. Appeals

"(a)(1) In the case of the termination of any benefits available to an employee under this subchapter on the grounds such employee declined a reasonable offer of a position the grade or pay of which was equal to or greater than his retained grade or pay, such termination may be appealed to the Office of Personnel Management under procedures prescribed by the Office.

"(2) Nothing in this subchapter shall be construed to affect the right of any employee to appeal—

"(A) under section 5112(b) or 5346(c) of this title, or otherwise, any reclassification of a position; or

"(B) under procedures prescribed by the Office of Personnel Management, any reduction-in-force action.

"(b) For purposes of any appeal procedures (other than those described in subsection (a) of this section) or any grievance procedure negotiated under the provisions of chapter 71 of this title—

"(1) any action which is the basis of an individual's entitlement to benefits under this subchapter, and

"(2) any termination of any such benefits under this subchapter, shall not be treated as appealable under

such appeals procedures or grievable under such grievance procedure.".

Subpart B—Regulatory Provisions of the Office of Personnel Management

This subpart contains the regulations of the Office of Personnel Management which implement the provisions of subchapter VI of chapter 53 of title 5, United States Code, and are prescribed by the Office under authority of 5 U.S.C. 5362, 5363, and 5365.

§ 536.201 Extension of grade and pay retention to employees moved from other pay systems.

(a) Under 5 U.S.C. 5362 and 5363, grade and pay retention are provided only to an employee who is in a covered pay schedule. However, under the authority of 5 U.S.C. 5365(b)(1), the Office of Personnel Management has extended the application of grade and pay retention to any individual, other than those excluded under paragraph (c) of this section, who is moved to a covered pay schedule from a pay schedule or pay system that is not a covered pay schedule, under circumstances which would otherwise entitle the employee to grade or pay retention.

(b) Grade retention (and subsequent pay retention, if applicable) is provided to such an employee in accordance with all of the provisions and restrictions of 5 U.S.C. 5362, 5363, 5364, and 5366, and in accordance with the other sections of this Part, except that the retained grade and the step of that retained grade to which such an employee is entitled, shall be determined in accordance with section 536.205.

(c) The extension of grade and pay retention under this section does not apply to any individual who moves from a position which is not in an agency (as defined in 5 U.S.C. 5102), nor does it apply to any individual, not already covered by law, who moves from a non-appropriated fund position.

§ 536.202 Extension of grade retention in a transfer of function.

(a) Under the authority of 5 U.S.C. 5365(b)(3) the Office of Personnel Management has extended the application of grade retention to any individual who declines to transfer with his or her function and, prior to separation for declining the transfer, is placed in a lower-graded position, provided:

(1) The transfer of function is to a location outside the employee's commuting area; and

(2) The employee has served for 52 consecutive weeks or more in one or more positions at a grade or grades higher than that of the lower-graded position in which placed.

(b) Grade retention (and subsequent pay retention, if applicable) is provided under paragraph (a) of this section in accordance with all of the provisions and restrictions of 5 U.S.C. 5362 (c) and (d), 5363, 5364, and 5366, and in accordance with the other sections of this subpart.

(c) An employee who is provided grade retention under paragraph (a) of this section shall retain that grade for 2 years beginning on the date the employee is placed in the new position.

§ 536.203 Exclusion of temporary or term employment.

(a) Under 5 U.S.C. 5361(1), grade and pay retention are limited to employees "whose employment is other than on a temporary or term basis." For the purpose of applying this provision, "employment on a temporary or term basis" is defined as employment under an appointment having a definite time limitation or designated as temporary or term by law.

(b) An employee serving under a temporary promotion or temporary reassignment is considered to be employed on a temporary basis with respect to the grade of the position temporarily occupied. Therefore, such an employee may not receive grade retention based on the grade held during the temporary promotion. In addition, neither grade nor pay retention will be terminated as the result of a temporary promotion or temporary reassignment during the grade retention period.

(c) For the purpose of paragraph (b) of this section, a "temporary promotion" is defined to be a promotion:

(1) With a definite time limitation; and

(2) Which the employee was informed in advance was temporary and would require the employee to return to his or her permanent grade at the termination of the temporary promotion.

§ 536.204 Movement between covered pay schedules.

(a) When an employee is moved, with or without his or her position, from a covered pay schedule to a different covered pay schedule under circumstances which would entitle the employee to grade retention, it is necessary to determine if the employee's position is in a lower grade, in order to determine whether a reduction in grade has occurred, and accordingly, whether grade retention under 5 U.S.C. 5362 is warranted.

(b) To make this determination, the representative rate of the employee's position before and after the movement must be determined. The "representative rate" of a position is:

(1) In the case of a position under the General Schedule, the fourth rate of the grade, or, in the case of GS-18, the single rate for the grade;

(2) In the case of a position under the merit pay system under chapter 54 of title 5, United States Code, the representative rate of the corresponding grade of the General Schedule;

(3) In the case of a position under a regular prevailing rate schedule established under subchapter IV of chapter 53 of title 5, United States Code, the second rate of the grade; or in the case of a position with a single rate, the actual rate of that position; and

(4) In the case of a position under a special prevailing rate schedule established under 5 U.S.C. 5343, the rate designated as representative of the position by the agency responsible for establishing and adjusting the special schedule;

(c) If the representative rate of the employee's position after movement is lower than the representative rate of the employee's position before the movement, then the movement has been to a lower grade, and the employee is entitled to grade retention under 5 U.S.C. 5362 or section 536.202 of this part if the employee is otherwise eligible.

§ 536.205 Movement from other pay systems.

(a) The retained grade of an employee to whom grade retention is extended by section 536.201 of this part shall be that grade of the covered pay schedule to which the employee has been moved that is the equivalent grade of the position the employee held before moving to the covered pay schedule. The equivalent grade is the lowest grade of the covered pay schedule which has a representative rate (as determined in accordance with section 536.204(b) of this part) equal to or greater than the representative rate (as designated by the agency) of the employee's position before the movement to the covered pay schedule. If there is no grade of the applicable pay schedule with a representative rate that equals or exceeds the representative rate of the grade from which the employee is moved, then the highest grade of the pay schedule to which the employee is moved is the equivalent grade.

(b) The step of the retained grade (the equivalent grade as determined in paragraph (a) of this section) to which an employee is entitled shall be the lowest step of that grade for which the scheduled rate equals or exceeds the scheduled rate for the grade and step held by the employee immediately prior to the movement, or if there is no such step, the employee is entitled to the maximum step of that grade.

§ 536.206 Grade retention and the merit pay system.

(a) This section provides regulations for the application of grade retention when an employee is entitled to grade retention as a result of being reduced in grade to or from a position under the merit pay system established under chapter 54 of title 5, United States Code.

[To be added when merit pay system is established.]

§ 536.207 Further reductions in grade.

(a) If, during a 2-year period of grade retention, an employee is further reduced in grade under circumstances also entitling the employee to grade retention, the employee shall continue to retain the previous retained grade for the remainder of the previous 2-year retention period. At the end of that period, the employee shall be entitled to retain the grade of the position to which the previous reduction in grade was made, until 2 years have passed from the date of the further reduction in grade.

(b) During the period after the original 2-year period resulting from the original reduction in grade has expired, but before the 2-year period from the date of the further reduction in grade has expired, the employee is entitled to be paid as if the further reduction had not occurred. The employee's rate of basic pay is to be fixed under section 536.211 of this Part either at a rate of the rate range for the grade to which the employee was previously reduced or at a retained rate of basic pay, computed as if the further reduction had not occurred. At the end of the 2-year period from the date of the further reduction, the employee's rate of basic pay is again to be fixed under section 536.211 of this part, at either a rate of the rate range for the grade to which the employee was further reduced or at a retained rate of basic pay, computed on the basis of the grade to which the employee was reduced by the further reduction in grade.

§ 536.208 Demotion for personal cause or at an employee's request.

(a) Under 5 U.S.C. 5362(d)(2) and 5 U.S.C. 5363(c)(3), grade and pay retention, respectively, cease to apply to an employee who is reduced in grade for personal cause or at his or her own request.

(b) A demotion for personal cause is an action based on the conduct, character, or unacceptable performance of an employee.

(c) A demotion is considered to be at an employee's request if the demotion is initiated by the employee for his or her benefit, convenience or personal advantage, or when the employee requests or consents to a demotion in lieu of a proposed adverse action for personal cause.

§ 536.209 Declination of a reasonable offer of a position.

(a) Under 5 U.S.C. 5362(d)(3) and 5 U.S.C. 5363(c)(2), grade and pay retention, respectively, cease to apply to an employee who declines a reasonable offer of a position the grade of which is equal to or higher than the employee's retained grade, in the case of an employee with a retained grade, or the rate of basic pay for which is equal to or higher than the employee's retained pay, in the case of an employee with retained pay. For the purpose of applying these provisions, a "reasonable offer of a position" must meet the following conditions:

(1) The offer must be in writing, and must include an official position description of the offered position;

(2) The offered position must be a permanent position and one for which the employee meets the established qualification requirements;

(3) The offered position must be in an agency, as defined in 5 U.S.C. 5102, although not necessarily in the same agency in which the employee is serving at the time of the offer;

(4) The offered position must be full-time (unless the employee's position immediately before the change creating entitlement to grade or pay retention was less than full-time, in which case the offered position must have a work schedule of no less time than the position held before the change); and

(5) The offered position must be in the same commuting area as the employee's position immediately before the offer, unless the employee is subject to a mobility agreement or a published agency policy which requires employee mobility.

(b) The termination of grade or pay retention will be effective on the last day of the pay period in which the declination is received.

§ 536.210 Effective date of employee's election to terminate grade retention.

Under 5 U.S.C. 5362(d)(4) an employee may elect in writing to terminate his or her grade retention entitlement. Grade retention will terminate in this case on the last day of the pay period in which the employee's written election is received in the personnel office.

§ 536.211 Determination of rate of basic pay.

(a) When an employee becomes eligible for pay retention by reason of the expiration of the 2-year period of grade retention, or otherwise becomes eligible for pay retention under the provisions of 5 U.S.C. 5363(a) or section 536.212 or section 536.213 of this part, the agency shall compare the employee's rate of basic pay immediately before such eligibility with the range of rates of basic pay for the grade of the position to be occupied by the employee upon such eligibility, and take the action prescribed as follows:

(1) If the employee's rate of basic pay immediately before the eligibility for pay retention is less than the minimum rate of the grade, the employee shall be placed in the minimum rate, and pay retention shall not apply;

(2) If the employee's rate of basic pay immediately before the eligibility for pay retention is equal to one of the rates of the grade, the employee shall be placed in that rate, and pay retention shall not apply;

(3) If the employee's rate of basic pay immediately before eligibility for pay retention falls between two consecutive rates of the grade, the employee shall be placed in the higher of the two rates, and pay retention shall not apply; or

(4) If the employee's rate of basic pay immediately before eligibility for pay retention exceeds the maximum rate of the grade, the agency shall determine the employee's allowable former rate of basic pay in accordance with the provisions of 5 U.S.C. 5363(b), and the rate so determined shall be the employee's retained rate of basic pay, and shall be subject to further adjustment in accordance with the provisions of 5 U.S.C. 5363(a). At such time as the maximum rate of the grade comes to equal or exceed the employee's retained rate of basic pay, the employee shall be placed in that maximum rate, and pay retention shall cease to apply.

(b) In computing increases in retained rates of pay under 5 U.S.C. 5363(a), and in computing allowable former rates of basic pay under 5 U.S.C. 5363(b):

(1) For positions paid at annual rates of basic pay, rates shall be rounded to the nearest dollar, counting 50 cents and over as a whole dollar; and

(2) For positions paid at hourly rates of basic pay, rates shall be rounded to the nearest cent, counting one-half cent and over as a whole cent.

§ 536.212 Extension of pay retention to employees in other circumstances.

(a) Under 5 U.S.C. 5363(a)(3), the Office of Personnel Management is authorized to prescribe circumstances in which pay retention shall be extended to employees who are not otherwise entitled to pay retention under 5 U.S.C. 5363. The Office of Personnel Management has determined that pay retention shall be extended under this provision, except as provided in paragraph (c) of this section, to any em-

ployee whose rate of basic pay would otherwise be reduced:

(1) As a result of reduction in force or reclassification when the employee does not meet the eligibility requirements for grade retention;

(2) As a result of the employee's declination of an offer to transfer with his or her function under circumstances not qualifying the employee for grade retention, reassignment to a position in a lower wage area, or reassignment to a position in a different pay schedule;

(3) As a result of the placement of the employee in a formal employee development program generally utilized Government-wide: Upward Mobility, Apprenticeship, and Career Intern Programs; or as the result of placement in a position which the agency has determined is hard to fill;

(4) Because the employee no longer meets a specific condition or requirement established by the agency or the Office of Personnel Management, such as allowable periods of service in foreign areas or qualifications requirements (including physical standards); or

(5) As the result of the reduction or elimination of scheduled rates, except those reflecting a decrease in the level of prevailing rates as determined by a wage survey, and the reduction or elimination of special schedules or special rates, other than those authorized under 5 U.S.C. 5303 (for which pay retention is provided by law).

(b) Except as provided in paragraph (c), an agency may extend pay retention to any employee whose rate of basic pay would otherwise be reduced:

(1) Under circumstances similar to those listed in paragraph (a); or

(2) As a result of a personnel action initiated by management to further an agency's mission, in accordance with the general intent of subchapter VI of chapter 53 of title 5, United States Code.

(c) This section does not extend pay retention to any employee:

(1) Who is reduced in grade or pay as a result of the termination of a temporary promotion; or

(2) Who is reduced in grade or pay for personal cause or at the employee's request.

(d) An employee to whom pay retention is extended by this section shall receive retained pay in accordance with the provisions of 5 U.S.C. 5363 and the applicable sections of this part.

§ 536.213 Grade and pay retention in other circumstances.

Under 5 U.S.C. 5365(b)(2)-(3), the Office of Personnel Management may provide for the application of all or portions of grade and pay retention benefits in circumstances not covered under 5 U.S.C. 5362-5363. The Director, Office of Personnel Management, or his or her designee, is authorized to approve, at the request of an agency, the application of grade and pay retention benefits, or any appropriate portion thereof, in such situations as that official determines appropriate and necessary.

§ 536.214 Appeal of termination of benefits because of declination of reasonable offer.

(a) Under 5 U.S.C. 5366(a)(1), an employee whose grade or pay retention benefits under 5 U.S.C. 5362-5363 and this part are terminated on the grounds such employee declined a reasonable offer of a position (as defined in section 536.209 of this part) may appeal such termination to the Office of Personnel Management. Such appeals shall be made in accordance with the provisions of paragraph (b) of this section, except in the case of employees covered under paragraph (e) of this section.

(b) An employee who appeals under this section shall file such appeal in writing with the Office of Personnel Management not later than 15 calendar days after the termination of grade or pay retention benefits, and shall state in the appeal the reasons why the employee believes the offer of a position was not a reasonable offer.

(c) The Office of Personnel Management may conduct any investigation or hearing it determines necessary to ascertain the facts of the appeal, and shall make its decision on the appeal in writing, and shall furnish a copy of the decision to the employee and to the agency.

(d) If a decision by the Office of Personnel Management on an appeal under this section requires corrective action by an agency, including the retroactive and prospective restoration of grade or pay retention benefits, the agency shall take such corrective action.

(e) Termination of benefits based on a declination of a reasonable offer by an employee in an exclusively recognized bargaining unit may be reviewed under negotiated grievance and arbitration procedures in accordance with chapter 71 of title 5, United States Code, and the terms of any applicable collective bargaining agreement. An employee in an exclusively recognized bargaining unit may not appeal a termination of benefits to the Office of Personnel Management if the grievance procedure of the agreement by which he or she is covered provides for such review.

§ 536.215 Effect of grade retention on quota spaces.

For the purpose of determining the number of positions at GS-16, 17 and 18 or the equivalent, including positions in the Senior Executive Service, authorized by an Act of Congress, the grade of the position occupied, rather than the retained grade, is to be used.

§ 536.216 Issuance of employee letter.

The employing agency shall give to the employee, with the copy of the Notification of Personnel Action (SF-50) documenting entitlement to grade retention, a letter explaining the action and the nature of the grade retention entitlement.

§ 536.217 Retroactive entitlements

Under section 801(b) of the Civil Service Reform Act of 1978 employees who otherwise meet the criteria of that section, and who were reduced in grade on or after January 1, 1977 and before the first day of the first pay period beginning on or after January 11, 1979 under circumstances which otherwise would have entitled the employee to grade retention as specified in 5 U.S.C. 5362 or sections 536.201 or 536.202 of these regulations, shall be entitled to pay and benefits as provided in section 801(b) under procedures and instructions issued by the Office of Personnel Management.

OFFICE OF PERSONNEL MANAGEMENT,
JAMES C. SPRY,
Special Assistant to the Director.

[FR Doc. 78-5976 Filed 3-1-79; 8:45 am]

[3410-02-M]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Navel Orange Reg. 455]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period March 2-8, 1979.

Such action is needed to provide for orderly marketing of fresh navel oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: March 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, (202) 447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under this marketing order, and upon other information, it is found that the limitation of handling of navel oranges, as hereafter provided, will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on February 27, 1979 to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges has improved from last week.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 907.755 Navel Orange Regulation 455.

Order. (a) The quantities of navel oranges grown in Arizona and California which may be handled during the period March 2, 1979, through March 8, 1979, are established as follows:

(1) District 1: 680,000 cartons;

(2) District 2: 120,000 cartons;

(3) District 3: unlimited movement.

(b) As used in this section, "handled", "District 1", "District 2", "District 3", and "carton" mean the same as defined in the marketing order.

(Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674))

Dated: March 1, 1979.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-6431 Filed 3-1-79; 8:45 am]

[3410-02-M]

[Lemon Reg. 188]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period March 4-10, 1979. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: March 4, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, (202) 447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, and upon other information, it is found that the limitation of handling of lemons, as hereafter provided, will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on February 27, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons improved somewhat from last week.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 910.488 Lemon Regulation 188.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period March 4, 1979, through March 10, 1979, is established at 240,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

(Secs. 1-19, 48 Stat. 31, as amended; (7 U.S.C. 601-674))

Dated: February 28, 1979.

D. S. KURYLOSKI,
Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-6497 Filed 3-1-79; 8:45 am]

[3410-02-M]

[§ 959.319]

PART 959—ONIONS GROWN IN SOUTH TEXAS

Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation requires fresh market shipments of onions grown in designated counties in South Texas to be inspected and meet minimum size and quality requirements. The regulation should promote orderly marketing of such onions and keep less desirable qualities and sizes from being shipped to consumers.

EFFECTIVE DATE: March 5, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Acting Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture,

Washington, D.C. 20250. Telephone (202) 447-4722.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR Part 959) regulate the handling of onions grown in designated counties of South Texas. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The South Texas Onion Committee, established under the order, is responsible for its local administration.

Notice of rulemaking was published in the December 21, 1978, FEDERAL REGISTER (43 FR 59509). Interested persons had until February 20, 1979, to file data, views or comments. None was received.

This regulation is based upon recommendations made by the committee at its public meeting in McAllen, Texas, on October 25, 1978. The recommendations of the committee reflect its appraisal of the expected volume and composition of the 1979 early spring crop of South Texas onions and of the marketing prospects for the shipping season which is expected to begin about March 5, 1979.

The grade and size requirements are similar to last season's and are designed to prevent onions of poor quality or undesirable sizes from being distributed in fresh market channels.

Thus, only onions that contain not more than 20 percent defects of U.S. No. 1 grade and are not packed or loaded on Sunday except for export may be shipped from March 5 through May 12, 1979. Again this season in order to provide more orderly marketing from all districts, the inspection and container requirements are extended through June 9, 1979.

The container requirements will prevent the use of off-size or deceptive containers which could adversely affect the reputation and returns of South Texas onions. However, they will not preclude the use of containers customarily packed for the retail trade. The prohibition on packaging and loading onions on Sunday is intended principally to provide more orderly marketing by tailoring shipments from the production area more closely to the ability of receiving markets to accept marketings. Again this season handlers will be permitted, with the approval of the committee, to grade, package and load onions on Sunday for export, provided that they shut down packing and loading operations on the first working day after shipment for the same length of time as they operated on Sunday. This should prevent handlers who ship on Sunday for export from gaining a competitive advantage due to longer packing hours over handlers who do not have export orders.

Exceptions are provided to certain of these requirements to recognize special situations in which such requirements are inappropriate or unreasonable. Up to 110 pounds of onions may be handled, other than for resale, per day without regard to requirements of this section in order to avoid placing an unreasonable burden on persons handling noncommercial quantities of onions.

The requirements with respect to special purpose shipments allow the shipment of onions for experimental purposes or the use of containers including bulk bins which have been the subject of test shipments during past seasons, and encourage exports by allowing the use of containers required for such purposes. Shipments for relief or charity are exempt since no useful purpose would be served by regulating such shipments.

Findings. After consideration of all relevant comments, including the proposal set forth in the notice, it is hereby found that the handling regulation, as hereinafter set forth, will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after its publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of onions grown in the production area will begin on or about the effective date specified herein, (2) to maximize benefits to producers, this regulation should apply to as many shipments as possible during the marketing season, and (3) compliance with this regulation, which is similar to that in effect during previous marketing seasons, will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective date hereof.

The regulation is as follows:

§ 959.319 Handling regulation.

During the period March 5 through June 9, 1979, no handler may package or load onions on Sunday or handle any onions except red varieties, unless they comply with paragraphs (a) through (d) or (e) or (f) of this section. However, the requirements of paragraphs (a) and (b) and the Sunday prohibition shall terminate at 11:59 p.m. on May 12, 1979.

(a) *Grade requirements.* Not to exceed 20 percent defects of U.S. No. 1 grade. In percentage grade lots, tolerances for serious damage shall not exceed 10 percent including not more than 2 percent decay. Double the lot tolerance shall be permitted in individual packages in percentage grade lots. Application of tolerances in U.S. onion standards shall apply to in-grade lots.

(b) *Size requirements.* (1) "Small"—1 to 2¼ inches in diameter, and limited to whites only;

(2) "Repacker"—1¾ to 3 inches in diameter, with 60 percent or more 2 inches in diameter or larger;

(3) "Medium"—2 to 3½ inches in diameter; or

(4) "Jumbo"—3 inches or larger in diameter.

(5) Tolerances for size in the U.S. onion standards shall apply except that for 'repacker' and 'medium' sizes not more than 20 percent, by weight, of onions in any lot may be larger than the maximum diameter specified. Application of tolerances in the U.S. onion standards shall apply.

(c) *Container requirements.* Except as provided in paragraph (f), only the following containers may be used:

(1) 25-pound bags, with an average net weight in any lot of not more than 27½ pounds per bag, and with outside dimensions not larger than 29 inches by 31 inches; or

(2) 50-pound bags, with an average net weight in any lot of not more than 55 pounds per bag, and with outside dimensions not larger than 33 inches by 39½ inches.

(3) These container requirements shall not be applicable to onions sold to Federal agencies or for export.

(d) *Inspection.* (1) No handler may handle any onions regulated hereunder, except pursuant to paragraphs (e) or (f)(3)(ii) of this section, unless an inspection certificate has been issued covering them and the certificate is valid at the time of shipment.

(2) No handler may transport by motor vehicle or cause such transportation of any shipment of onions for which an inspection certificate is required unless each such shipment is accompanied by a copy of the inspection certificate applicable there or by documentary evidence on forms furnished by the committee identifying truck lots to which a valid inspection certificate is applicable and a copy of such inspection certificate or committee document is surrendered upon request to authorities designated by the Committee.

(3) For purposes of operation under this part each inspection certificate or committee form required as evidence of inspection is hereby determined to be valid for a period not to exceed 72 hours following completion of inspection as shown on the certificate.

(4) Handlers shall pay assessments on all assessable onions according to the provisions of Section 959.219.

(e) *Minimum quantity exemption.* Any handler may handle, other than for resale, up to, but not to exceed 110 pounds of onions per day without regard to the requirements of this section, but this exemption shall not

apply to any shipment or any portion thereof of over 110 pounds of onions.

(f) *Special purpose shipments and culls.* (1) Onions may be handled in containers customarily packed for the retail trade and in other designated special purpose containers as follows:

(i) Each handler desiring to make such shipments shall first apply to the committee for and obtain a Certificate of Privilege to make such shipments.

(ii) After obtaining an approved Certificate of Privilege, each handler may handle onions packed in 2, 3 or 5-pound containers customarily packed for the retail trade, or 50-pound cartons, if they meet the grade, size, and inspection requirements of paragraphs (a), (b) and (d) of this section and if they are handled in accordance with the reporting requirements established in subparagraph (2) of this paragraph on such shipments. Shipments of 2, 3 and 5-pound containers and 50-pound cartons shall not exceed 10 percent of a handler's total weekly onion shipments.

(iii) The average gross weight per lot of onions packed in master containers shall not exceed 115 percent of the designated net contents.

(iv) The average net weight per lot of 50-pound cartons shall not exceed 55 pounds.

(2) *Reporting requirements for shipments in designated special purpose containers.* Each handler who handles shipments of onions in containers customarily packed for the retail trade and in other designated special purpose containers, shall report to the committee the inspection certificate numbers, the grade and size of onions packed, and the size of the containers in which such onions were handled. Such report, in accordance with § 959.80, shall be furnished to the committee in such manner, on such forms and at such times as it may prescribe. Each handler shall maintain records of such shipments pursuant to § 959.80(c), and the records shall be subject to review and audit by the committee to verify reports thereon.

(3) *Experimental shipments.* (i) Upon approval of the committee, onions may be shipped in bulk bins with inside dimensions of 47 inches x 37½ inches x 36 inches deep and having a volume of 63,450 cubic inches, or similar containers. Each container shall have a new perforated 2-mil polyethylene liner. Also, onions may be shipped in 40-pound cartons, but not to exceed 4,000 cartons. Such experimental shipments shall be exempt from paragraph (c) of this section but shall not exceed ten percent of a handler's total weekly onion shipments and shall be handled in accordance with safeguard provisions of § 959.54 and this paragraph. The receiver shall furnish the committee with a report on the arrival condition of each shipment.

(ii) Upon approval of the committee, onions may be shipped for other experimental purposes exempt from regulations issued pursuant to §§ 959.42, 959.52 and 959.60, provided they are handled in accordance with safeguard provisions of § 959.54.

(4) *Export shipments.* (i) Upon approval of the committee, the prohibition against packaging or loading onions on any Sunday may be modified or suspended to permit the handling of onions for export provided such handling complies with the procedures and safeguards specified by the committee.

(ii) Following approval, if the handler grades, packages and ships onions for export on any Sunday, such handler shall on the first workday following shipment, cease all grading, packaging and shipping operations for the same length of time as the handler operated on Sunday. Upon completion of such shipments, the handler shall report thereon as prescribed by the committee.

(iii) Export shipments shall also be exempt from all container requirements of this section.

(5) *Onions for charity, relief, canning and freezing.* Onions for charity, relief, canning and freezing shall be exempt from the requirements of paragraphs (a) through (d). Such onions shall be handled according to the provisions of § 959.126(b).

(6) *Onions failing to meet requirements.* Onions failing to meet the grade, size, and container requirements of this section, and not exempt under paragraphs (e) or (f)(4) of this section, may be handled only pursuant to § 959.126. Culls may be handled pursuant to § 959.126(a)(1).

(g) *Definitions.* "U.S. onion standards" mean the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR 2851.3195-2851.3209), or the United States Standards for Grades of Onions (Other Than Bermuda-Granx-Grano and Creole Types) (7 CFR 2851.2830-2851.2854), whichever is applicable to the particular variety, or variations thereof specified in this section. The term "U.S. No. 1" shall have the same meaning as set forth in these standards.

All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 143, as amended, and this part.

(h) *Applicability to imports.* Onions imported during the period March 19 through May 12, 1979, will be in most direct competition with onions produced in South Texas and regulated under Marketing Order No. 959, as amended. Therefore, under Section 8e and Section 980.117 "Import Regulations" (43 FR 5499) of the act such imported onions shall have not more than 20 percent defects of U.S. No. 1 grade and be at least 1 inch in diameter for white varieties and at least 1¾ inches in diameter for all other varieties. In percentage grade lots, tolerances for serious damage shall not exceed 10 percent including not more than 2 percent decay. Double the lot tolerance shall be permitted in individual packages in percentage grade lots. Applications of tolerances in the U.S. Grade standards shall apply to in-grade lots. Onions with transit time from country of origin to entry into the United States of ten or more days may be entered if they meet an average tolerance for decay of not more than 5 percent.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

Dated February 27, 1979, to become effective March 5, 1979.

This regulation has not been determined significant under Executive Order 12044.

Dated: February 27, 1979.

CHARLES R. BRADER,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-6454 Filed 3-1-79; 8:45 am]

[3410-34-M]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 82—EXOTIC NEWCASTLE DISEASE; AND PSITTACOSIS OR ORNITHOSIS IN POULTRY

Area Quarantined

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to quarantine a portion of Orange County in California because of the existence of exotic Newcastle disease. Exotic Newcastle disease was confirmed in Orange County, California, February 20, 1979. Therefore, in order to prevent the dissemination of exotic Newcastle disease it is necessary to quarantine the infested area.

EFFECTIVE DATE: February 21, 1979.

FOR FURTHER INFORMATION CONTACT:

Dr. M. A. Mixson, USDA, APHIS, VS, Federal Building, Room 748, Hyattsville, Maryland 20782, 301-436-8073.

SUPPLEMENTARY INFORMATION: This amendment quarantines a portion of Orange County in California because of the existence of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah, and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles, from quarantined areas, as contained in 9 CFR Part 82, as amended, will apply to the quarantined area.

Accordingly, Part 82, Title 9, Code of Federal Regulations is hereby amended in the following respect:

In § 82.3, the introductory portion of paragraph (a) is amended by adding thereto the name of the State of California and a new paragraph (a)(1) relating to the State of California is added to read:

§ 82.3 Areas quarantined.

(a) * * *

(1) *California.* The premises of John William Bonk, 7545 Katella Avenue, Apartment 127, Stanton, Orange County.

* * * * *

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132 (21 U.S.C. 111-113, 115, 117, 120, 123-126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141.)

The amendment imposes certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, and must be made effective immediately to accomplish its purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisons in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 21st day of February 1979.

NOTE: This final rulemaking is being published under emergency procedures as authorized by E.O. 12044 and Secretary's Memorandum 1955. It has been determined by M. A. Mixson, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the possibility of the spread of exotic Newcastle disease into other States or Territories of the United States is severe enough to constitute an emergency which warrants the publication of this quarantine without waiting for public comment. This amendment, as well as the complete regulation, will be scheduled for review under provisions of E.O. 12044 and Secretary's Memorandum 1955. The review will include preparation of an Impact Analysis Statement which will be available from Program Services Staff, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301-436-8695.

M. T. GOFF,
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 79-5866 Filed 3-1-79; 8:45 am]

[7590-01-M]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 35—HUMAN USES OF BYPRODUCT MATERIAL

Calibration of Teletherapy Units

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Approval of Record Keeping Requirement by Comptroller General.

SUMMARY: On January 8, 1979, the Nuclear Regulatory Commission published in the FEDERAL REGISTER a notice of rule making, effective July 9, 1979, amending its regulation "Human Uses of Byproduct Material" to require medical licensees to (1) calibrate each teletherapy unit annually and (2) perform monthly spot checks on those calibrations.

The notice included the following note:

NOTE.—The Nuclear Regulatory Commission has submitted this rule to the Comptroller General for review under the Federal Reports Act, as amended, 44 U.S.C. 3512. The date on which the rule becomes effective, unless advised to the contrary, accordingly reflects inclusion of the 45-day period which that statute allows for this review (44 U.S.C. 3512(c)(2)).

Notice is hereby given that the record keeping requirement set out in the rule has been approved by the U.S. General Accounting Office.

EFFECTIVE DATE: July 9, 1979. The record keeping requirement set out in the notice of rule making amending 10 CFR Part 35 which was published in the FEDERAL REGISTER on January 8, 1979 (44 FR 1722) has been approved by the U.S. General Accounting Office under No. B-180225 (R0068).

FOR FURTHER INFORMATION CONTACT:

Gerald L. Hutton, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone 301-492-7086.

Dated at Bethesda, Md., this 14th day of February 1979.

For the Nuclear Regulatory Commission.

LEE V. GOSSICK,
Executive Director for Operations.

[FR Doc. 79-6388 Filed 3-1-79; 8:45 am]

[6210-01-M]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

PART 226—TRUTH IN LENDING

Publication in CFR of Supplements I Through VI to Regulation Z

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Publication in CFR of Supplements I through VI to Regulation Z: Correction.

SUMMARY: In FR Doc. 79-4318, appearing at page 7942 of the issue for February 8, 1979, the table in the center column under SUPPLEMENTARY INFORMATION should read as follows:

Supplement I (34 FR 2017) Feb. 12, 1969, § 226.40.
Supplement II (34 FR 12330) July 26, 1969, § 226.50.
Supplement III (35 FR 5215) March 28, 1970; as amended at (35 FR 7550) May 15, 1970; (35 FR 10358) June 25, 1970; (35 FR 11992) July 25, 1970; (37 FR 24105) Nov. 14, 1972, § 226.55.
Supplement IV (36 FR 1041) Jan. 22, 1971, § 226.60.
Supplement V (41 FR 55329) Dec. 20, 1976, § 226.70.
Supplement VI (43 FR 21319) May 17, 1978, § 226.80.

FOR FURTHER INFORMATION CONTACT:

Glen E. Loney, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Telephone: (202) 452-3867.

Board of Governors of the Federal Reserve System, February 27, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 79-6400 Filed 3-1-79; 8:45 am]

[6210-01-M]

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Docket No. R-0206]

PART 261b—RULES REGARDING PUBLIC OBSERVATION OF MEETINGS

Final Rule

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System has amended its regulations relating to public observation of meetings in order to reflect its current policy of (1) making available copies of staff documents underlying Board discussion of agenda items to persons attending open meetings; (2) making available to the public electronic recordings of open Board meetings; and (3) providing a mailing list of persons who wish to be notified personally and in advance about open Board meetings. In addition, the amendments would provide procedures for requests that the Board open to the public a previously announced closed meeting.

EFFECTIVE DATE: February 26, 1979.

ADDRESS: Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR FURTHER INFORMATION CONTACT:

MaryEllen A. Brown, Senior Attorney, (202) 452-3608, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: In addition to the open meeting procedures mandated by the Government in the Sunshine Act (5 U.S.C. Sec. 552b), the Board has adopted procedures to inform the public more fully about these meetings—namely, by distributing staff documents underlying Board discussions to persons attending open meetings; by making cassette recordings of open meeting discussions available to the public; and by providing that either written or telephoned requests may be made by persons who wish to receive copies of announcements for open Board meetings. The amendments incorporate these procedures into the Board's formal rules that implement the Act. In addition, the amendments provide procedures by which members of the public may request the Board to open an announced closed meeting.

Pursuant to the authority of 5 U.S.C. Sec. 553(b)(B), this rule is being promulgated in final form, without prior opportunity for public comment, because these amendments are chiefly pro forma in nature in that they conform Board rules to existing practices. Accordingly, public comment about the rule would be unnecessary.

Section 12 CFR 261b.4 is amended and section 261b.8(f) is added to read as follows:

§ 261b.4 Meetings open to public observation.

(a) Except as provided in § 261b.5, every portion of every meeting of the agency shall be open to public observation.

(b) Copies of staff documents considered in connection with agency discussion of agenda items for a meeting that is open to public observation shall be made available for distribution to members of the public attending the meeting, in accordance with the provisions of 12 CFR Part 261.

(c) The agency will maintain a complete electronic recording adequate to record fully the proceedings of each meeting or portion of a meeting open to public observation. Cassettes will be available for listening in the Freedom of Information Office, and copies may be ordered for $5 per cassette by telephoning or by writing Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

(d) The agency will maintain mailing lists of names and addresses of all persons who wish to receive copies of agency announcements of meetings open to public observation. Requests for announcements may be made by telephoning or by writing Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

* * * * *

§ 261b.8 Meetings closed to public observation under regular procedures.

* * * * *

(f) Any person may request in writing to the Secretary of the Board that an announced closed meeting, or portion of the meeting, be held open to public observation. The Secretary, or in his or her absence, the Acting Secretary of the Board, will transmit the request to the members of the Board and upon the request of any member a recorded vote will be taken whether to open such meeting to public observation.

* * * * *

By order of the Board of Governors, February 26, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 79-6390 Filed 3-1-79; 8:45 am]

[8025-01-M]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Revision 6, Amdt. 21]

PART 120—BUSINESS LOAN POLICY

Indian-Owned Businesses

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule makes small business concerns which are owned and controlled by Indian tribes eligible for SBA assistance. This change is necessary because of Pub. L. 95-507 which overturned SBA's policy of not making loans to concerns owned and controlled by Indian tribes.

EFFECTIVE DATE: March 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Evelyn Cherry, Chief, Special Projects Division, Office of Financing, Small Administration, 1441 L St., NW., Washington, D.C. 20416, (202) 653-6696.

SUPPLEMENTARY INFORMATION: Section 231 of Pub. L. 95-507 amended section 7(a) of the Small Business Act by inserting "or small-business concerns 100 percent owned and controlled by an Indian tribe . . ." The purpose of this statutory amendment was to overcome this Agency's prior position that an applicant for a section 7(a) loan would be ineligible if it were owned and controlled by an Indian tribe. Because of this statutory amendment a new provision is being added to make it clear that an applicant will no longer be ineligible because it is in any way owned or controlled by an Indian tribe. This amendment is not issued for proposed rulemaking because it constitutes a liberalization of existing policy. Interested persons are, however, invited to submit any written comments or suggestions. Material thus submitted will be given consideration and evaluation for possible SBA action. Therefore, pursuant to the authority of section 5(b) (6) and (a) of the Small Business Act (15 U.S.C. 631 et seq), Part 120 of the SBA Rules and Regulations is amended by adding paragraph (c)(5) as follows:

§120.2 Business loan and guarantees.

* * * * *

(c) *Assurance of repayment; change of ownership; recreational and amusement enterprises; agricultural enterprises; and Indian tribes.*

* * * * *

(5) Loans to applicants owned or controlled by Indian tribes. The eligibility of small business concerns under section 7(a) of the Small Business Act shall not be adversely affected because any such concern is owned or controlled by an Indian tribe as defined in 25 U.S.C. 450b(b).

(Catalog of Federal Domestic Assistance Programs No. 59.012 Small Business Loans.)

Dated: January 19, 1979.

A. VERNON WEAVER,
Administrator.

[FR Doc. 79-6355 Filed 3-1-79; 8:45 am]

[8010-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15457 A]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Filing and Disclosure Requirements Relating to Beneficial Ownership

AGENCY: Securities and Exchange Commission.

ACTION: Correction.

SUMMARY: This document corrects FR Doc. 79-810 appearing on pages 2144 through 2155 in the FEDERAL REGISTER of January 9, 1979. In Instruction (2) of "Instructions for Cover Page" in the first column on page 2148 the reference to Rule 13d-1(e)(1) should be to Rule 13d-1(f)(1). In the heading §240.13d-102 in the third column on page 2148 the reference to §240.13d-(1)(b) should be to §240.13d(1) (b) and (c). In Instruction (2) of "Instructions for Cover Page" in the first column on page 2152 the reference to Rule 13d-1(e)(1) should be to Rule 13d-1(f)(1).

FOR FURTHER INFORMATION CONTACT:

William H. Carter, Office of Disclosure Policy and Proceedings, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 376-8090.

GEORGE A. FITZSIMMONS,
Secretary.

FEBRUARY 23, 1979.

[FR Doc. 79-6320 Filed 3-1-79; 8:45 am]

[4810-25-M]

Title 20—Employees' Benefits

CHAPTER VIII—JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

PART 901—REGULATIONS GOVERNING THE PERFORMANCE OF ACTUARIAL SERVICES UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Explanation of Status of Certain Regulations

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Explanation of Status of 20 CFR 901.13.

SUMMARY: The decision in *Sol Tabor* v. *Joint Board for the Enrollment of Actuaries* vacated certain regulations governing the performance of actuarial services under the Employee Retirement Income Security Act of 1974 and required adoption of a new final rule. The new final rule was used as the basis to codify 20 CFR Part 901 and, as a result of a technical error in the codification, a section was omitted therefrom.

FOR FURTHER INFORMATION CONTACT:

Mr. Leslie S. Shapiro, Executive Director, 202-376-0767.

SUPPLEMENTARY INFORMATION: A final rule setting forth provisions of 20 CFR Part 901 was published in the FEDERAL REGISTER for January 14, 1976 (41 FR 2080). This rule shows that §901.13, Eligibility for enrollment of individuals applying for enrollment on or after January 1, 1976, as "reserved". The text of §901.13 was published thereafter as a final rule in the FEDERAL REGISTER of November 12, 1976 (41 FR 49970). On July 22, 1977, the United States Court of Appeals for the District of Columbia Circuit in *Sol Tabor* v. *Joint Board for the Enrollment of Actuaries* (No. 76-1947) vacated the regulations appearing at 41 FR 2080 and remanded the matter to the Board to enable it to adopt new rules accompanied by a contemporaneous statement of basis and purpose. The 20 CFR 901.13 regulations published on November 12, 1976 were not in issue in that case. As a result of the Court's decision, the Joint Board issued a new final rule to supersede the one vacated. The new rule, which appeared in the FEDERAL REGISTER of August 3, 1977 at page 39200, was identical to the rule vacated. It did not include the text of §901.13 because that provision had not been affected by the Court's decision. It appears that the codification of 20 CFR Part 901 was based on the rule printed in the August 3, 1977 FEDERAL REGISTER which did not include the text of 20 CFR 901.13. Even though not codified, 20 CFR 901.13 has been in effect since November 12, 1976, the date it was published in the FEDERAL REGISTER, and has not at any time been rescinded.

It is anticipated that, in view of this Explanation, future editions of 20 CFR will include the text of §901.13. The present provisions of 20 CFR 901.13 are printed below for the convenience of the reader.

Dated: February 16, 1979

ROWLAND E. CROSS,
Chairman, Joint Board for the Enrollment of Actuaries.

§901.13 Eligibility for enrollment of individuals applying for enrollment on or after January 1, 1976.

(a) *In general.* An individual applying on or after January 1, 1976, to be an enrolled actuary, must fulfill the experience requirement of paragraph (b) of this section, the basic actuarial knowledge requirement of paragraph (c) of this section, and the pension actuarial knowledge requirement of paragraph (d) of this section.

(b) *Qualifying experience.* Within a 10 year period immediately preceding the date of application, the applicant shall have completed either:

(1) A minimum of 36 months of responsible pension actuarial experience, or

(2) A minimum of 60 months of responsible actuarial experience, including at least 18 months of responsible pension actuarial experience.

(c) *Basic actuarial knowledge.* The applicant shall demonstrate knowledge of basic actuarial mathematics and methodology by one of the following:

(1) *Joint Board basic examination.* Successful completion, to a score satisfactory to the Joint Board, of an examination, prescribed by the Joint Board, in basic actuarial mathematics and methodology including compound interest, principles of life contingencies, commutation functions, multiple-decrement functions, and joint life annuities.

(2) *Organization basic examinations.* Successful completion, to a score satisfactory to the Joint Board, of one or more proctored examinations which are given by an actuarial organization and which the Joint Board has determined cover substantially the

same subject areas, have at least a comparable level of difficulty, and require at least the same competence as the Joint Board basic examination referred to in paragraph (c)(1) of this section.

(3) *Qualifying formal education.* Receipt of a bachelor's or higher degree from an accredited college or university after the satisfactory completion of a course of study:

(i) In which the major area of concentration was actuarial mathematics, or

(ii) Which included at least as many semester hours or quarter hours each in mathematics, statistics, actuarial mathematics and other subjects as the Board determines represent equivalence to paragraph (c)(3)(i) of this section.

(d) *Pension actuarial knowledge.* The applicant shall demonstrate pension actuarial knowledge by one of the following:

(1) *Joint Board pension examination.* Successful completion, to a score satisfactory to the Joint Board, of an examination, prescribed by the Joint Board, in actuarial mathematics and methodology relating to pension plans, including the provisions of ERISA relating to the minimium funding requirements and allocation of assets on plan termination.

(2) *Organization pension examinations.* Successful completion, to a score satisfactory to the Joint Board, of one or more proctored examinations which are given by an actuarial organization and which the Joint Board has determined cover substantially the same subject areas, have at least a comparable level of difficulty, and require at least the same competence as the Joint Board pension examination referred to in paragraph (d)(1) of this section.

(e) *Denial of enrollment.* An applicant may be denied enrollment if:

(1) The Joint Board finds that the applicant, during the 15-year period immediately preceding the date of application and on or after the applicant's eighteenth birthday has engaged in disreputable conduct. The term disreputable conduct includes, but is not limited to:

(i) An adjudication, decision, or determination by a court of law, a duly constituted licensing or accreditation authority (other than the Joint Board), or by any federal or state agency, board, commission, hearing examiner, administrative law judge, or other official administrative authority, that the applicant has engaged in conduct evidencing fraud, dishonesty or breach of trust.

(ii) Giving false or misleading information, or participating in any way in the giving of false or misleading information, to the Department of the Treasury or the Department of Labor or the Pension Benefit Guaranty Corporation or any officer or employee thereof in connection with any matter pending or likely to be pending before them, knowing such information to be false or misleading.

(iii) Willfully failing to make a federal tax return in violation of the revenue laws of the United States, or evading, attempting to evade, or participating in any way in evading or attempting to evade any federal tax or payment thereof, knowingly counseling or suggesting to a client or prospective client an illegal plan to evade federal taxes or payment thereof, or concealing assets of himself or another to evade federal taxes or payment thereof.

(iv) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Department of the Treasury or the Department of Labor or the Pension Benefit Guaranty Corporation by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor, or thing of value.

(v) Disbarment or suspension from practice as an actuary, attorney, certified public accountant, public accountant, or an enrolled agent by any duly constituted authority of any state, possession, territory, Commonwealth, the District of Columbia, by any Federal Court of record, or by the Department of the Treasury.

(vi) Contemptuous conduct in connection with matters before the Department of the Treasury, or the Department of Labor, or the Pension Benefit Guaranty Corporation including the use of abusive language, making false accusations and statements knowing them to be false, or circulating or publishing malicious or libelous matter.

(2) The applicant has been convicted of any of the offenses referred to in section 411 of ERISA.

(3) The applicant has submitted false or misleading information on an application for enrollment to perform actuarial services or in any oral or written information submitted in connection therewith or in any report presenting actuarial information to any person, knowing the same to be false or misleading.

[FR Doc. 79-6356 Filed 3-1-79; 8:45 am]

[4110-03-M]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 78P-0059]

PART 131—MILK AND CREAM

Repeal of Standard of Identity for Sour Half-and-Half Dressing; Confirmation of Effective Date of Final Regulation

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document confirms the effective date of the final regulation that repealed the standard of identity for sour half-and-half dressing and gives notice that no objections were filed to the regulation.

EFFECTIVE DATE: November 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Eugene T. McGarrahan, Bureau of Foods (HFF-415), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-245-1155.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of September 29, 1978 (43 FR 44833), the Food and Drug Administration issued a final regulation that repealed the standard of identity for sour half-and-half dressing (21 CFR 131.189). The final regulation established that use of the words "sour half-and-half" in the name of a product that could be fabricated from ingredients other than milk and cream could be misleading to consumers. No objections were received in response to the final regulation.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner (21 CFR 5.1), notice is given that no objections were received and that the final regulation repealing the standard of identify for sour half-and-half dressing (21 CFR 131.189) as promulgated in the FEDERAL REGISTER of September 29, 1978 (43 FR 44833) became effective November 28, 1978.

Dated: February 23, 1979.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-5966 Filed 3-1-79; 8:45 am]

[4110-03-M]

SUBCHAPTER D—DRUGS FOR HUMAN USE

[Docket No. 76N-0028/PSA]

PART 310—NEW DRUGS

Inhalation Anesthetic Drugs; Administrative Stay of Regulation and Request for Comments on Petition

AGENCY: Food and Drug Administration.

ACTION: Stay of Regulation.

SUMMARY: The Food and Drug Administration (FDA) is staying, on its own initiative, its regulation that requires manufacturers of certain inhalation anesthetic drug products to study them in animals to determine the products' potentials to cause cancer and birth defects. The agency is also requesting comments on a citizen petition to revoke the regulation. The agency is staying the regulation because new information that became available after the final regulation was published raises questions about whether the required studies are still necessary.

DATES: The stay is effective March 2, 1979; comments on the petition to revoke the regulation by May 1, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Michael C. McGrane, Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5220.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of July 22, 1977 (42 FR 37538), FDA established in § 310.511 (21 CFR 310.511) certain requirements for inhalation anesthetic drugs. That section requires the holders of new drug applications (NDA's) and abbreviated new drug applications (ANDA's) for halogenated inhalation anesthetic drug products to conduct animal studies on the potential of their drug products to cause cancer and to affect reproduction, including causing birth defects. The NDA and ANDA holders were required to submit reports on these studies to FDA to be used to determine whether the labeling of the products should be revised to provide for safer use of the drug products or whether approval of the applications for the products should be withdrawn.

Under the regulation, FDA may approve an NDA or ANDA for a halogenated inhalation anesthetic drug product that is identical to one identified in the regulation before receipt of the final report on the animal studies for the identified drug products if the applicant agrees to conduct animal studies after the application is approved. In addition, the regulation requires an NDA or ANDA for any inhalation anesthetic drug (except anesthetic drugs that are specifically identified in the regulation) to contain the results of animal studies to determine the potential of the drug to cause cancer and to affect reproduction.

The final regulation became effective on August 22, 1977. The holders of approved NDA's and ANDA's for drug products subject to the regulation were required to submit preliminary study protocols by September 20, 1977 and to submit final protocols by February 13, 1978. Preliminary protocols for the studies were discussed at a workshop held by FDA on December 5 and 6, 1977. In the FEDERAL REGISTER of March 14, 1978 (43 FR 10553), the date for submission of final protocols was extended to September 1, 1978. On August 29, 1978, FDA sent a study protocol, which the agency considers to comply with the regulation, to each NDA and ANDA holder. The agency prepared the protocol on the basis of the results of the December 1977 workshop and the combined efforts of the industry, FDA staff, and consultants. The application holders were given 60 days to respond to the August 29 letter.

The five companies who hold the approved NDA's and ANDA's for all marketed halogenated inhalation anesthetic drug products jointly petitioned the Commissioner of Food and Drugs on September 28, 1978, to stay the implementation of § 310.511. A copy of the petition has been placed on public display in the office of the Hearing Clerk, FDA. The petitioners contend that no rational basis exists in the regulation's administrative record that would permit FDA to require the holders of approved NDA's and ANDA's for halogenated inhalation anesthetic drug products to conduct the animal tests. The petitioners further contend that FDA is not authorized under section 505(j) of the act (21 U.S.C. 355(j)) to require the animal studies.

FDA views the petition for stay to be untimely under § 10.35 (21 CFR 10.35), which requires a petition for stay to be submitted no later than 30 days after the date of the decision involved. Thus, a petition for a stay of action on § 310.511 to be timely should have been filed by August 22, 1977.

Nevertheless, FDA believes that new information identified by the petitioners that has become available since both the publication of the final rule and the holding of the inhalation anesthetic workshop raises questions about whether the studies required under § 310.511 are still necessary. FDA does not agree with the petitioners, however, that the agency is not authorized to require these studies. As stated in paragraph 1 of the preamble to the final regulation, the Commissioner concludes that sections 505 and 701(a) of the act (21 U.S.C. 355 and 371(a)) establish authority to require these studies.

Accordingly, FDA has determined that the regulation should be stayed pending a determination of whether the required animal studies are still necessary. Although the agency views the September 28, 1978 petition for stay of action as untimely, FDA has determined to consider it as a citizen petition under § 10.30 (21 CFR 10.30) to revoke the regulation.

Although FDA is staying the regulation, the stay does not affect the Commissioner's general authority under section 505 of the act and Part 314 (21 CFR Part 314) to require that an NDA or ANDA contain full reports of investigations to show that the drug is safe and effective for its intended use. Thus, approval of an NDA or ANDA for an inhalation anesthetic drug may be refused unless the application contains full reports of studies in animals to determine the drug product's carcinogenic potential and its effects on reproduction.

§ 310.511 [Stayed]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 505, 701(a), 52 Stat. 1052-1053 as amended, 1055 (21 U.S.C. 355, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), § 310.511 *Inhalation anesthetic drugs* (21 CFR 310.511) is stayed until further notice.

Interested persons may, on or before May 1, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding the petition to revoke 21 CFR 310.511. Four copies of all comments shall be submitted, except individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This stay is effective March 2, 1979.

Dated: February 23, 1979.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc. 79-6223 Filed 3-1-79; 8:45 am]

[4110-03-M]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Dinoprost Tromethamine Sterile Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a supplemental new animal drug application (NADA) filed by the Upjohn Company, providing for labeling revisions for an injectable prostaglandin used in mares for its luteolytic effect.

EFFECTIVE DATE: March 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Donald A. Gable, Bureau of Veterinary Medicine (HFV-114), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.

SUPPLEMENTARY INFORMATION: The Upjohn Company, Kalamazoo, MI 49001, filed a supplemental NADA (100-202V) providing for revisions to the "Warnings" statement for dinoprost tromethamine injection used intramuscularly in mares for its luteolytic effect.

The supplement does not affect safety or effectiveness aspects of the parent NADA. Consequently, this approval does not involve reevaluation of the parent NADA nor does it constitute reaffirmation of the drug's safety and effectiveness.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), § 522.690 is amended by revising paragraph (d)(3) to read as follows:

§ 522.690 Dinoprost tromethamine sterile solution.

* * * * *

(d) * * *

(3) Not for human use. Do not allow pregnant women, asthmatics, or persons with bronchial and other respiratory problems to administer. Spills of dinoprost tromethamine on the skin should immediately be washed off with soap and water.

* * * * * *

Effective date. This regulation is effective March 2, 1979.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: February 21, 1979.

LESTER M. CRAWFORD,
Director, Bureau of Veterinary Medicine.

[FR Doc. 79-6221 Filed 3-1-79; 8:45 am]

[4110-03-M]

SUBCHAPTER F—BIOLOGICS

[Docket No. 79N-0005]

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

Clarification of Bulk Sterility Test Requirements

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the biologics regulations to clarify that only one repeat bulk sterility test is permitted in determining whether a lot of product meets the requirements for sterility.

EFFECTIVE DATE: March 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Donna C. Williams, Bureau of Biologics (HFB-620), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, MD 20014; 301-443-1306.

SUPPLEMENTARY INFORMATION: The biologics regulation on sterility, § 610.12(b) (21 CFR 610.12(b)) provides that if growth appears in any of the test media during sterility testing of either bulk or final container material, the test may be repeated to rule out faulty test procedures. Section 610.12(b)(1) of the regulation further prescribes requirements for the bulk sterility tests while § 610.12(b) (2) and (3) prescribes requirements for the first and second repeat final container tests, respectively.

The intent of the regulation is to permit only one repeat bulk sterility test and two repeat final container tests. However, it has come to the attention of the agency that this regulation is occasionally misinterpreted to mean that more than one repeat bulk sterility test is permitted. To clarify the intent, § 610.12(b)(1) is amended to add a sentence to specify that only one repeat bulk test may be conducted.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner (21 CFR 5.1), § 610.12 is amended by revising paragraph (b)(1) to read as follows:

§ 610.12 Sterility.

* * * * *

(b) * * *

(1) *Repeat bulk test.* Only one repeat bulk test may be conducted. The volume of inoculum to be used for the repeat bulk test shall be as prescribed in paragraph (d)(1) of this section. The repeat test shall be performed using the procedure prescribed in paragraph (a)(1)(i) of this section.

* * * * *

Under the Administrative Procedure Act (5 U.S.C. 553(b) and (d)), the Commissioner finds that notice, public procedure, and delayed effective date are unnecessary for the amendment of § 610.12(b)(1) because it does not impose an additional duty or burden on any person but rather clarifies an existing regulation to preclude misinterpretation.

Effective date. This regulation is effective March 2, 1979.

(Sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262).)

Dated: February 26, 1979.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-6224 Filed 3-1-79; 8:45 am]

[4910-22-M]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

PART 630—PRECONSTRUCTION PROCEDURES

Subpart I—Federal Participation in the Cost of Truck Weighing Station Construction Items

RESCISSION OF REGULATION

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescission of regulation.

SUMMARY: This document rescinds the above regulation (Subpart I of part 630) pursuant to Section 106(a) of the Federal-Aid Highway Act of 1978 which amended the definition of construction in 23 U.S.C. 101(a) to include capital improvements which directly facilitate an effective vehicle weight enforcement program such as scales, scale houses, and other capital improvements. Federal-aid construction fund participation was previously not allowed for the purchase and installation of scales for weigh stations.

EFFECTIVE DATE: March 8, 1979.

FOR FURTHER INFORMATION CONTACT:

Vince Ciletti, Chief, Programs Branch, Federal-Aid Division, 202-426-0450; or David C. Oliver, Office of the Chief Counsel, 202-426-0825, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The definition of "construction" in 23 U.S.C. 101(a) now permits the use of Federal-aid construction funds for scales, scale houses, and other capital improvements which will facilitate an effective vehicle weight enforcement program in the States. The number of weigh stations on the Interstate System will no longer be limited and may be approved on the basis of need established in the State's weight enforcement program.

Accordingly, the Federal Highway Administration hereby rescinds and reserves Subpart I—Federal Participation in the Cost of Truck Weighing Station Contruction Items—of Part 630, Chapter I of Title 23, Code of Federal Regulations.

NOTE.—The Federal Highway Administration has determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation pursuant to E.O. 12044.

(23 U.S.C. §§ 101(a), 315; 49 CFR 1.48(b))

Issued on February 16, 1979.

JOHN S. HASSELL, Jr.,
Deputy Administrator.

[FR Doc. 79-6232 Filed 3-1-79; 8:45 am]

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER III—GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

[Docket No. R-79-627]

PART 300—GENERAL

List of Attorneys-in-Fact

AGENCY: Department of Housing an Urban Development.

ACTION: Final rule.

SUMMARY: This amendment updates the current list of attorneys-in-fact by amending Paragraph (c) of 24 CFR 300.11. These attorneys-in-fact are authorized to act for the Association by executing documents in its name in conjunction with serving GNMA's mortgage purchase programs, all as more fully described in Paragraph (a) of 24 CFR 300.11.

EFFECTIVE DATE: April 2, 1979.

ADDRESSES: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410. Telephone: (202) 755-7603.

FOR FURTHER INFORMATION CONTACT:

Mr. William J. Linane, Office of General Counsel, on (202) 755-7186.

SUPPLEMENTARY INFORMATION: Notice and public procedure on this amendment are unnecessary and impracticable because of the large volume of legal documents that must be executed on behalf of the Association.

§300.11 [Amended]

1. Paragraph (c) of §300.11 is amended by deleting the following name from the current list of attorneys-in-fact:

Name and Region

Loretta A. Meissler, Philadelphia, PA.

2. Paragraph (c) of Section 300.11 is amended by adding the following name to the current list of attorneys-in-fact:

Name and Region

Loretta Casey, Philadelphia, PA.

(Section 309(d) of the National Housing Act, 12 U.S.C. 1723a(d), and Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).)

Issued at Washington, D.C. on February 14, 1979.

JOHN H. DALTON,
President, Government
National Mortgage Association.

[FR Doc. 79-6322 Filed 3-1-79; 8:45 am]

[4210-01-M]

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FI-4561]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Mullens, Wyoming County, W. Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Mullens, Wyoming County, W. Va.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Mullens, Wyoming County, W. Va.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Mullens, Wyoming County, West Virginia, are available for review at the Mullens City Hall, Mullens, West Virginia.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Mullens, Wyoming County, West Virginia.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a

period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Guyandotte River.	Corporate Limits Upstream.	1,429
	N & W Railroad Upstream.	1,422
	W. Va. Route 16 Downstream.	1,412
	Corporate Limits Downstream.	1,400
Slab Fork Creek....	Corporate Limits.....	1,502
	Morgan Avenue Upstream (South of intersection of Trace Street).	1,484
	Confluence with Terry Branch Upstream.	1,464
	Norfolk and Western Railroad Downstream.	1,457
	Morgan Avenue Upstream (North of Intersection with Phillips Street).	1,448
	Morgan Avenue Upstream (North of Intersection with Water Street).	1,422
	At confluence with Guyandotte River.	1,411

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 31, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-6344 Filed 3-1-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4562]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Peterstown, Monroe County, W. Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Peterstown, Monroe County, West Virginia. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Peterstown, Monroe County, West Virginia.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Peterstown, Monroe County, West Virginia, are available for review at the Peterstown Town Hall, Peterstown, West Virginia.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Peterstown, Monroe County, West Virginia.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Brush Creek.....	Mill Street.....	1,622
	Upstream Corporate Limits.	1,677
Rich Creek.....	Market Street.....	1,596
	Confluence of Scott Branch.	1,609
	Market Street.....	1,624
	Thomas Street.....	1,669
Scott Branch.....	Confluence with Rich Creek.	1,609
	D Street.....	1,626

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 31, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-6345 Filed 3-1-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4419]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Ranson, Jefferson County, W. Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Ranson, Jefferson County, West Virginia.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map

(FIRM), showing base (100-year) flood elevations, for the Town of Ranson, Jefferson County, West Virginia.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Ranson, Jefferson County, West Virginia, are available for review at the Ranson Town Hall, Third & Mildred Streets, Ranson, West Virginia.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Ranson, Jefferson County, West Virginia.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Evitts Run	Downstream Corporate Limits.	495
	Chessie System Bridge Downstream.	500
	Upstream Corporate Limits.	503

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued: December 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-6346 Filed 3-1-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4563]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Rowlesburg, Preston County, W. Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Rowlesburg, Preston County, West Virginia.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Rowlesburg, Preston County, West Virginia.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Rowlesburg, Preston County, West Virginia, are available for review at the Rowlesburg Fire Hall, Rowlesburg, West Virginia.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Rowlesburg, Preston County, West Virginia.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Cheat River	Downstream Corporate Limits.	1,379
	Maple Avenue	1,388
	Chessie System	1,389
	Upstream Corporate Limits.	1,393
Saltlick Creek	Confluence with Cheat River.	1,389
	Chessie System	1,390
	State Route 51 Bridge	1,406
	Upstream Corporate Limits.	1,440

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 24, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-6347 Filed 3-1-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4678]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for The City of Baraboo, Sauk County, Wis.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Baraboo, Sauk County, Wisconsin. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Baraboo, Sauk County, Wisconsin.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Baraboo are available for review at the City Clerk's Office, Baraboo City Hall, 135 4th Street, Baraboo, Wisconsin.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Baraboo, Sauk County, Wisconsin.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Baraboo River	At eastern corporate limits.	818
	At Manchester Street	819
	Just downstream of Waterworks Dam.	822
	Just upstream of Waterworks Dam.	825
	Just upstream of Circus World Museum bridge.	827
	Just downstream of Oak Street Dam.	830
	Just upstream of Oak Street Dam.	834
	At South Boulevard Broadway.	835
	Just upstream of Second Avenue.	838
	160 feet downstream of western corporate limits.	843
	Just downstream of Shaw Street.	846

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and the Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719)).

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 31, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-6348 Filed 3-1-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4565]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for The Town of Manderson, Big Horn County, Wyo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Manderson, Big Horn County, Wyoming. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Manderson, Wyoming.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Manderson, are available for review at Town Hall, Manderson, Wyoming.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Manderson, Wyoming.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Bighorn River	U.S. Highway 20—100 feet upsteam from centerline.	3897
Nowood River	Corporate Limits—370 feet upstream of Marshall Street Bridge.	3902
	Intersection of Sherman Avenue and First Street.	3902

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development

Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 STAT. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 25, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-6349 Filed 3-1-79; 8:45 am]

[4410-05-M]

Title 28—Judicial Administration

CHAPTER III—FEDERAL PRISON INDUSTRIES, DEPARTMENT OF JUSTICE

PART 301—INMATE ACCIDENT COMPENSATION

Final Rules

AGENCY: Federal Prison Industries, Justice.

ACTION: Final rules.

SUMMARY: This document contains final rules governing compensation awards paid to former Federal Prison inmates for injuries sustained while working in prison. The final rules are primarily intended to clarify existing regulations and to: (1) Insure more complete documentation of work related injuries to inmates; (2) clarify that awards are based on physical impairment rather than disability; (3) provide guidance as to those injuries considered work-related and thus potentially compensable; and (4) eliminate a current regulation providing for suspension of compensation awards upon reincarceration.

DATE: This amendment is effective on March 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone number 202-724-3062.

SUPPLEMENTARY INFORMATION: Notice of proposed rulemaking was published at 43 FR 52498-52500 (Monday, November 13, 1978) and a deadline for public comment was set for January 22, 1979. In response to our invitation, public comment was received from two individuals, one of whom was supportive of the proposal. The second commentator took exception to two specific aspects of the proposed rules. The commentator believed that the proposed changes allow disabled inmates to be compensated at their potential rather than their actual earning level. The commentator also objected to the provision that compensation be continued in the event of an inmate's reincarceration.

In actuality, an award which may result from an inmate's claim for accident compensation is granted solely on the degree of physical impairment and not on the basis of disability. Physical impairment is an objective measure of an anatomic or functional abnormality or loss resulting from injury. Most awards are based on a specific number of weeks as a result of an impairment involving a specific body member. The Federal Employees Compensation Act (5 U.S.C., Chapter 81) is used as our guide in establishing the duration of awards. Accident compensation awards are based on the prevailing hourly minimum wage (established by the Fair Labor Standards Act) in effect at the time of the inmate's release. This level of payment was adapted to provide equity throughout the Federal Prison System as many inmates have no marketable skills and therefore little wage earning capacity, while others may have considerable wage earning potential. As the minimum wage increases, balances on awards still outstanding are adjusted to reflect current minimum wage.

We do not support the suspension of these payments in the event an inmate is again incarcerated as this entails increased administrative costs necessitated by the maintenance of ongoing records as well as those costs relating to periodic increases in the minimum wage. A more effective approach is to dispose of these payments in a timely fashion.

Three changes for purposes of clarification are made in the proposed rules. As a result of internal staff review, proposed § 301.5 has been amended by deleting the reference to "Federal custody" and substituting "the institution or community treatment center". The new language does not constitute a change in the proposed rule, but is a clarification intended to specify when the one year period is initiated for filing a claim for physical impairment. In the first line of this same section, the term "date release" is corrected to read "release date". The second sentence of proposed § 301.9 has been amended by substituting the word "or" for the word "and", this in recognition of the fact that voluntary work may assist in the operation of the institution, in the maintenance of the institution or in both.

In consideration of the foregoing and by virtue of the authority vested in the Attorney General by 18 U.S.C. 4126 and delegated by the Attorney General by 28 CFR 0.99 and by the Board of Directors of Federal Prison Industries, Inc., 28 CFR, Chapter III is amended as follows:

PART 301—INMATE ACCIDENT COMPENSATION

1. By revising §§ 301.1 through 301.5 to read as follows:

§ 301.1 Purpose and scope.

This part contains procedures governing payment of accident compensation awards to former Federal prison inmates, for injuries sustained while working in Federal Prison Industries, Inc., or in the operation or maintenance of a Federal correctional institution as authorized by 18 U.S.C. 4126. This part also contains procedures governing payment of "lost-time wages" to current inmates working in Federal Prison Industries, Inc., who are absent from work due to work-related injuries (see 28 CFR 301.10). "Injury", as used in this part, is defined to include illness, as work-related illnesses are compensable to the same extent as work-related injuries.

§ 301.2 Medical attention.

Whenever an inmate worker is injured while in the performance of assigned duty, regardless of how trivial the injury may appear, he shall immediately report the injury to his official superior. The employee will take whatever action is necessary to secure for the injured such first aid, medical, or hospital treatment as may be necessary for the proper treatment of the injury. Medical, surgical, and hospital service will be furnished by the medical staff of the institution. Refusal by an inmate worker to accept such medical, surgical, hospital, or first aid treatment may cause forfeiture of any claim for accident compensation for physical impairment resulting therefrom.

§ 301.3 Record of injury and initial claim.

After initiating necessary action for medical attention the work detail supervisor shall immediately secure a record of the cause, nature, and exact extent of the injury, and shall see that the injured inmate submits within 48 hours sufficient information for the supervisor to complete Administrative Form 19, Injury Report (Inmate). The names and testimony of all witnesses shall be secured. If the injury resulted from the operation of mechanical equipment, an identifying description of the machine or instrument causing the injury shall be given.

§ 301.4 Report of injury.

(a) All injuries reported by the inmate shall be reported by the inmate's work detail supervisor on Ad-

ministrative Form 19, Injury Report (Inmate). After review by the institution safety officer, or his appointed representative, for completeness, the report shall be delivered to the warden or superintendent of the institution, and then forwarded promptly to the safety administrator in the Washington office. All questions on Form 19 shall be answered in complete detail. A medical description of the injury must be included on Administrative Form 19 wherever the injury is such as to require medical attention.

§ 301.5 Prerelease claim for compensation.

(a) As soon as a release date or transfer to a community treatment center is determined, but not in advance of 30 days prior to this date, each inmate injured in industries or on an institutional work assignment during his confinement, who feels he has a residual impairment from a work related accident, shall be given FPI Form 43 revised, and advised of his rights to make out his claim for compensation. Every assistance will be given him to properly prepare the claim if he wishes to file. Claims must be made within 60 days following release from the institution when circumstances preclude submission prior to release. However, a claim for physical impairment may be allowed within 1 year after release from the institution or community treatment center, for reasonable cause shown. In each case a physical examination shall be given and a definite statement made as to the physical impairment caused by the alleged injury. Failure to submit to a final physical examination before release or transfer to a community treatment center shall result in the forfeiture of all rights to compensation and future medical treatment. In each case of visible impairment, disfigurement, or loss of member, photographs shall be taken to show the actual condition and shall be transmitted with FPI Form 43.

(b) The claim, after preparation and execution by the inmate, shall be completed by the physician making the final examination. It shall be forwarded promptly to the Claims Examiner, Federal Prision Industries, Inc., Washington, D.C., accompanied by, or with reference made to, Form 19, Injury Report (Inmate).

2. By revising §§ 301.9 and 301.10 to read as follows:

§ 301.9 Compensable and noncompensable injuries.

Compensation is basically paid for "on the job" injuries. This includes not only injuries suffered on an inmate's regular work assignment, but also those injuries resulting from voluntary work, approved by staff, in the operation or maintenance of the institution. Compensation is not paid, however, for injuries resulting from participation in institutional programs (such as programs of a social, recreational, or community relations nature) or from maintenance of one's own living quarters. Futhermore, compensation will not be paid for injuries suffered away from the work location, e.g., while the claimant is going to or leaving work or going to or coming from lunch outside of the work station or area. Injuries sustained by inmate workers willfully or with intent to injure someone else, or injuries suffered in any activity not related to their work assignment are not compensable, and no claim for compensation for such injuries will be considered. Any injury resulting from willful violation of rules and regulations may prevent award of compensation.

§ 301.10 Compensation for lost time.

No accident compensation will be paid for compensable injuries while the injured inmate remains in custody. However, inmates assigned to industries will be paid wages for the number of regular work hours in excess of three consecutive inmate mandays they were absent from work because of injuries suffered while in the performance of their work assignments. The rate of pay shall be 66⅔ percent of the standard hourly rate for the grade if the injured is not helping to support dependents, and 75 percent of the standard hourly rate if the injured is helping to support dependents. No claim for compensation will be considered if full recovery occurs while the injured is in custody and no significant impairment remains after release.

3. By revising §§ 301.21 and 301.22 to read as follows:

§ 301.21 Establishing the amount of the award.

In determining the amount of accident compensation to be paid consideration will be given to the permanency and severity of the injury in terms of temporary and permanent physical impairment. The provisions of the Federal Employees' Compensation Act shall be followed when applicable. The minimum wage prescribed by the Fair Labor Standards Act applicable at the time of each periodic payment shall be used as the wage basis in determining the amount of such compensation. In no event shall compensation be paid in greater amount than that provided in the Federal Employees' Compensation Act (Title 18, United States Code § 4126).

§ 301.22 Time and method of payment of compensation claim.

(a) Upon determination of the amount of compensation to be paid, a copy of the award will be furnished the claimant and monthly payments will usually begin about the first day of the month following the month in which the award is effective. Payments shall normally be made through the office of the U.S. probation officer of the district in which the claimant resides. When the amount of the award exceeds $500, lump sum payments will rarely be made, and only in exceptional cases where it is clearly shown to be beneficial and necessary for the support of the claimant or dependents.

§ 301.23 [Deleted]

4. By deleting § 301.23 and renumbering subsequent sections accordingly.

5. By revising § 301.24 (as renumbered) to read as follows:

§ 301.24 Civilian compensation laws distinguished.

Compensation awarded hereunder differs from awards made under civilian workman's compensation laws in that hospitalization is usually completed prior to the inmate's release from the institution and, except for a 3-day waiting period, the inmate receives wages while absent from work. Other factors necessarily must be considered that do not enter into the administration of civilian workmen's compensation laws. As in the case of Federal employees who allege they have sustained work-related injuries, the burden of proof lies with the claimant to establish that his claimed impairment is causally related to his assigned institution employment.

(18 U.S.C. 4126, 28 CFR 0.99 and by Board of Directors of Federal Prison Industries, Inc.)

Dated: February 27, 1979.

NORMAN A. CARLSON,
Acting Commissioner, Federal Prison Industries, Inc.

[FR Doc. 79-6303 Filed 3-1-79; 8:45 am]

[4510-26-M]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1952—APPROVED PLANS FOR ENFORCEMENT OF STATE STANDARDS

Utah: Approval of Plan Supplements

AGENCY: Occupational Safety and Health Administration, Department of Labor

ACTION: Approval of Utah's Field Operations Manual.

SUMMARY: This notice gives approval of Utah's Revised Field Operations Manual. Revisions to the manual were made by the State to bring it into conformity with program and policy changes made by the Occupational Safety and Health Administration in the Federal Field Operations Manual.

EFFECTIVE DATE: March 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles Boyd, Project Officer, Office of State Programs, Occupational Safety and Health Administration, U. S. Department of Labor, 3rd and Constitution Ave., N.W., Washington, D.C. 20210, (202) 653-5377.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act) for review of changes and progress in the development and implementation of State plans which have been approved under section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1978, a notice was published in the FEDERAL REGISTER of the approval of the Utah plan and of the adoption of Subpart E of Part 1952 containing the decision (38 FR 1178). On April 25, 1978, the State of Utah submitted a supplement to the plan involving a Federal program change (see Subpart C of 29 CFR Part 1953). On September 1, 1978, the supplement was resubmitted to the Regional Administrator in Denver, Colorado, with the changes requested by the Regional Office. The supplement was then forwarded to the Office of State Programs for approval on October 6, 1978.

DESCRIPTION OF PLAN SUPPLEMENT

Field Operations Manual. The Utah Field Operations Manual generally parallels the Federal Manual. A complete revised manual was submitted, with revisions made in the majority of the Manual's chapters. These revisions were made in response to OSHA's Federal program changes. Utah's manual provides procedures and guidelines for standards promulgation, inspections, citations, review procedures, complaints, training and education, etc.

LOCATION OF THE PLAN AND ITS SUPPLEMENT FOR INSPECTION AND COPYING

A copy of the plan and the supplement may be inspected and copied during normal business hours at the following locations: Technical Data Center, Room S-6212, 3rd and Constitution Ave. N.W., Washington, D.C. 20210; Office of the Regional Administrator, Room 1554, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; and the Utah Industrial Commission, UOSHA Offices at 448 South 400 East, Salt Lake City, Utah 84111.

PUBLIC PARTICIPATION

Under § 1953.2(c) of this chapter, the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the Utah plan supplement described above is substantially identical to OSHA policies and procedures. Accordingly, it is found that further public comment is unnecessary.

DECISION

After careful consideration, the Utah plan supplement is hereby approved under Subpart C of 29 CFR Part 1953. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at Washington, D.C. this 8th day of February 1979.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 79-6003 Filed 3-1-79; 8:45 am]

[4510-29-M]

Title 29—Labor

CHAPTER XXV—PENSION AND WELFARE BENEFIT PROGRAMS, DEPARTMENT OF LABOR

PART 2510—DEFINITION OF TERMS

Severance Pay Plans

AGENCY: Department of Labor.

ACTION: Amendment of regulation.

SUMMARY: This document amends regulation 29 CFR § 2510.3-2(b) under the Employee Retirement Income Security Act of 1974 (ERISA), setting forth circumstances in which a severance pay plan is not deemed a pension plan under ERISA. The term, "severance pay" refers to certain payments made to employees on account of their separation from employment for reasons other than retirement. The primary effect of the amendment is to permit such payments to be made in greater amounts, and over a longer period of time, than was previously the case while being deemed not to be a pension plan under Title I of ERISA.

DATES: The regulation is effective retroactive to January 1, 1975.

FOR FURTHER INFORMATION CONTACT:

John Keene, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216. (202) 523-8518. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On March 10, 1978,[1] the Department of Labor (the Department) proposed to amend 29 CFR § 2510.3-2(b), setting forth certain circumstances under which severance pay plans would not be deemed to be "employee pension benefit plans" or "pension plans" for purposes of Title I of ERISA.[2] The proposed amendment was issued after members of the public had suggested that the existing regulation was unnecessarily restrictive and posed practical difficulties. Upon consideration of the public comments received in response to the proposed amendment, the Department is adopting the amendment as proposed except for the modifications discussed further herein. Set forth below is a discussion of the previously existing regulation and the manner in which that regulation was proposed to be modified, followed by a discussion of the primary suggestions made by the public commentators and the Department's conclusions with respect to those suggestions.

1. THE PREVIOUSLY EXISTING REGULATION

The previously existing regulation concerning severance pay arrangements, which is set forth as paragraph (b) of 29 CFR § 2510.3-2, provides that, for purposes of Title I of ERISA, a

---

[1] 43 FR 10579, March 14, 1978.

[2] The terms, "employee pension benefit plan" and "pension plan" are defined in section 3(2) of ERISA to mean:

any plan, fund or program . . . established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

(A) provides retirement income to employees, or (B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

It should be noted that a severance pay plan which is not a pension plan may nonetheless be an employee welfare benefit plan under section 3(1) of ERISA, and thus be subject to certain of the requirements of that statute. This matter is discussed further in the text following.

plan, fund, or program under which payments are made on account of an employee's separation from the service of an employer will not be deemed to be a pension plan provided that: (a) the employee's separation is for reasons other than retirement; (b) all such payments to the employee are completed within one year after the separation from service; and (c) the total amount of the payments to the employee does not exceed his annual compensation level. The regulation further provides that the term, "annual compensation level" means an amount equivalent to the annual cash compensation of the employee for the 12-month period before his separation. The annual compensation is to be determined in any reasonable manner which takes into account the employee's final rate of compensation before separation, and which excludes fringe benefits.

2. THE PROPOSED AMENDMENT

In the notice issued March 10, 1978, the Department proposed to amend the existing regulation by, among other things, expanding the class of severance pay plans which would be deemed not to be pension plans. Specifically, it was proposed to provide that such severance pay plans could provide a maximum benefit equal to two years, rather than one year, of the employee's annual rate of compensation,[3] and that the benefit could be paid over a term of two years, rather than one year, after the employee's separation from the employer's service. In the case of an employee whose employment was terminated in connection with a "limited program of terminations," as defined in the proposed amendment, the payments could continue for two years following the date the employee reached normal retirement age; however, for employees affected by such a program as for other employees, the payments could not exceed twice the employee's annual compensation.

Finally, the proposed amendment explicitly provided that the regulation was of the "safe harbor" type. That is, while severance pay plans meeting the conditions of the regulation would be deemed not to be pension plans, the regulation did not preclude the possibility that severance pay plans *not* meeting those conditions might also not be pension plans within the meaning of ERISA. The status of plans not meeting the conditions of the regulation would depend upon the relevant facts and circumstances.

3. PUBLIC COMMENTS AND THE AMENDMENT BEING ADOPTED

In general, the public comments expressed agreement with the concept that the severance pay regulation should be amended so as to expand the class of severance pay plans which would be deemed not to be pension plans. However, a number of technical suggestions and questions were raised.

First, several commentators noted that the "safe harbor" protection of the proposed amendment extended only to plans "providing severance pay benefits when an employee terminates service for reasons other than retirement." Commentators suggested that this provision might be read as excluding from the safe harbor severance arrangements in which payments are made to employees who happened to retire after their termination from service. It was argued that, to this extent, the provision might unnecessarily contribute to discrimination against employees whose service was terminated after they had reached retirement age.

The proposed amendment was not intended to differentiate or to cause a differentiation between severance benefits paid to employees who happen to retire after termination, and severance benefits paid to employees who do not retire. Rather, the provision discussed above was intended to exclude from the safe harbor programs of payments which are made because of, or which are conditional upon, an employee's retiring, since such payments would seem to constitute retirement income rather than severance pay. Thus, the amendment being adopted makes clear that the status of severance payments under the regulation does not depend upon whether the recipient of the payments has retired, so long as he is not required, directly or indirectly, to retire in order to receive the payments. It should be noted that, under this provision, the protection of the safe harbor would be unavailable not only if the benefits were explicitly made contingent upon retirement, but also if the surrounding circumstances were such that the benefits were, in practice, paid only to employees who had reached retirement age.

Secondly, some commentators objected to the condition that the payment of severance benefits under the regulation generally be completed within two years of the termination of the employee's service. Persons opposing this limitation argued that extending the payments over a longer period of time might be advantageous to employees for tax reasons or for other reasons, and that the limitation upon the length of time during which severance payments could be made was unnecessary in view of the limitation upon the total amount of such payments.

The Department is not persuaded that the proposed two-year limitation upon the duration of severance benefits should be removed or modified. The reason for the limitation is to ensure that severance benefits coming within the regulation's safe harbor will be distinguishable from retirement income, and that such benefits can therefore fairly be said not to constitute a pension plan. Although there might be cases where severance payments taking place for a period longer than two years could be shown not to constitute a pension plan on the basis of the particular facts and circumstances,[4] the Department is not prepared to state as a general matter that payments over such an extended period would not represent retirement income. However, is should be noted that, although the amendment being adopted does not explicitly provide that the regulation is a "safe harbor", it is the position of the Department that a severance pay plan not meeting the conditions of the regulation might nonetheless not constitute a pension plan.

For similar reasons, the Department has determined not to adopt the suggestion of some commentators that the proposed amendment be modified by deleting the requirement that the amount of the severance pay benefits not exceed twice the employee's annual rate of compensation.[5]

---

[3] The proposed amendment would impose no limits upon the types of compensation which could be taken into account in computing an employee's annual rate of compensation. In this respect, the proposed amendment differed from the existing regulation, which, as noted above, required that fringe benefits be excluded from the computation.

[4] Somewhat different considerations apply where the payments are made in connection with a limited program of terminations. The payment of severance benefits in such cases would seem distinguishable from retirement income even if the payments take place for more than two years, so long as they do not extend indefinitely into the employee's retirement. Accordingly, the amendment being adopted provides that payments made in connection with a limited program of terminations must be completed within the later of 24 months after the termination of the employee's service or 24 months after the employee reaches normal retirement age. Moreover, as explained below, the amendment being adopted omits the proposed requirement that an employee elect early retirement benefits in order to qualify for such extended payments.

[5] It has been suggested that this limitation is unnecessary where the payments are made in connection with a limited program of terminations, since payments made in such circumstances would not be the functional equivalent of a pension plan regardless of the amount of the payments. However, the Department is not persuaded that this would be true in all cases, and thus the amendment being adopted makes the limitation upon the maximum amount which can be paid applicable irrespective of whether the employee's service was terminated in connection with a limited program of terminations. On the other hand, if a severance

Footnotes continued on next page

The amendment as proposed provided that severance payments to employees whose service was terminated in connection with a program of limited terminations could extend until two years after the employee reached normal retirement age, provided that the employee elected early retirement benefits. Some commentators urge that the condition that such employees elect early retirement benefits could be unfair to employees who are not participants in a pension plan which provides for early retirement, or who have not reached early retirement age. The Department believes that these arguments have merit, and that the condition that employees receiving severance payments in connection with a limited program of terminations elect early retirement in order for the benefits to be paid until two years after normal retirement age is not necessary to accomplish the purposes of the regulation. Accordingly, that condition is not included in the amendment being adopted.

The term, "limited program of terminations" was defined in the proposed amendment to mean a program which is, among other things, of "limited duration". Some commentators suggested that, to the extent that the requirement of limited duration might be interpreted to mean that the program must be completed within a relatively short period of time, the requirement might impose unnecessary practical difficulties.

The proposed definitional requirement of limited duration was not intended to imply that the program of terminations must be completed within any particular period of time. Rather, this provision was intended to complement the proposed requirement that the program be "defined in scope." These two requirements, taken together, were intended to ensure that the extended period of severance payments available under the regulation with respect to employees whose services were terminated in connection with a limited program of terminations would not be available with respect to continuous or routine terminations of employment.[6] The amendment as adopted has been redrafted to clarify this intent.

Another matter which is being clarified in the amendment as adopted is the permissibility of including the value of fringe benefits in computing an employee's annual compensation for purposes of the regulation. The previously existing regulation required that fringe benefits be *excluded* from the computation, but this requirement was not contained in the proposed amendment, nor is it contained in the amendment being adopted. The amendment being adopted makes clear that fringe benefits and all other compensation may be taken into account in computing an employee's annual compensation.

Finally, the Department is taking this opportunity to point out that a severance pay plan which meets the conditions of the regulation, and thus is not a pension plan under section 3(2) of ERISA, may nontheless constitute an employee welfare benefit plan under section 3(1) of ERISA.[7] In this regard the Department notes that, since the provision of severance pay is one of the recognized purposes for a welfare plan under section 3(1), it would seem that severance pay plans would in virtually all cases be welfare plans, whether or not they are also pension plans for purposes of Title I of ERISA. A plan which is a welfare plan but not a pension plan under Title I of ERISA is subject to Part 1 of that title (relating to reporting and disclosure), as well as Part 4 (relating to fiduciary responsibility) and Part 5 (relating to administration and enforcement). Such a plan is not, however, subject to Parts 2 and 3 of Title I (relating to participation, vesting, and funding).

STATUTORY AUTHORITY: Section 505 of ERISA (29 U.S.C. 1135).

OTHER MATTERS: For purposes of clarity, the amendment as adopted differs from the proposed amendment in certain editorial respects. No substantive changes from the proposed amendment are intended except those discussed above.

Because the amendment being adopted herein sets forth an interpretive rule and imposes no burden upon any person, the Department finds that the amendment may be made effective upon less than 30 days' notice and retroactive to January 1, 1975.

DRAFTING INFORMATION: The principal author of this regulation was Stevan Durovic of the Office of the Solicitor, Plan Benefits Security Division, Department of Labor. However, other persons in the Department of Labor participated in developing the regulation, on matters of both substance and style.

In consideration of the foregoing, the Department hereby amends 29 CFR § 2510.3-2, effective January 1, 1975, by amending paragraph (b) thereof, the paragraph is amended to read in its entirety as follows:

§ 2510.3-2 Employee pension benefit plan.

* * * * *

(b) *Severance pay plans.* (1) For purposes of Title I of the Act and this chapter, an arrangement shall not be deemed to constitute an employee pension benefit plan or pension plan solely by reason of the payment of severance benefits on account of the termination of an employee's service, provided that:

(i) Such payments are not contingent, directly or indirectly, upon the employee's retiring;

(ii) The total amount of such payments does not exceed the equivalent of twice the employee's annual compensation during the year immediately preceding the termination of his service; and

(iii) All such payments to any employee are completed,

(A) In the case of an employee whose service is terminated in connection with a limited program of terminations, within the later of 24 months after the termination of the employee's service, or 24 months after the employee reaches normal retirement age; and

(B) In the case of all other employees, within 24 months after the termination of the employee's service.

(2) For purposes of this paragraph (b),

(i) "Annual compensation" means the total of all compensation, including wages, salary, and any other benefit of monetary value, whether paid in the form of cash or otherwise, which was paid as consideration for the employee's service during the year, or which would have been so paid at the employee's usual rate of compensation if the employee had worked a full year.

Footnotes continued from last page

pay plan does not come within the regulation's safe harbor because the amount paid exceeds twice the employee's annual compensation, the fact that the employee's service was terminated in connection with a limited program of terminations might be among the facts and circumstances relevant to a determination as to whether the payments nonetheless do not constitute a pension plan.

[6] Again, such a limitation is necessary in order to ensure that severance benefits coming within the regulation's safe harbor are distinguishable from retirement income.

[7] Section 3(1) of ERISA defines the terms, "employee welfare benefit plan" and "welfare plan" to mean: any plan, fund or program * * * established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

Among the benefits described in paragraph (6) of section 302(c) of the Labor Management Relations Act, 1947, are "pooled vacation, holiday, severance or similar benefits."

(ii) "Limited program of terminations" means a program of terminations:

(A) Which, when begun, was scheduled to be completed upon a date certain or upon the occurrence of one or more specified events;

(B) Under which the number, percentage or class or classes of employees whose services are to be terminated is specified in advance; and

(C) Which is described in a written document which is available to the Secretary upon request, and which contains information sufficient to demonstrate that the conditions set forth in subclauses (A) and (B) of this clause (ii) have been met.

* * * * *

Signed at Washington, D.C. this 22nd day of February 1979.

IAN D. LANOFF,
Administrator, Pension and Welfare Benefit Programs, Labor-Management Service Administration.

[FR Doc. 79-5812 Filed 2-23-79; 9:04 am]

[4810-25-M]

Title 31—Money and Finance: Treasury

CHAPTER V—OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE TREASURY

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

Holding of Blocked Funds in Interest-Bearing Accounts

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending its Foreign Assets Control Regulations by the addition of §§ 500.205 and 500.611. The purpose of § 500.205 is to require any person holding certain types of blocked assets to hold the property in an interest-bearing account. The need for the amendment is that the holding of such assets in non-interest-bearing status is inconsistent with good management of the property and with the policy objectives of the Regulations. The effect of the amendment is that most types of blocked assets henceforth will be held in interest-bearing status, the holding of blocked funds in non-interest-bearing status being prohibited.

The purpose of § 500.611 is to require persons subject to § 500.205 to report on a one-time basis on the nature of blocked assets affected thereby. The need for the amendment is that such information is not now readily available, and the amendment will have the effect of improving administration and control of blocked assets by providing such information in simple, efficient and usable form.

In addition, the Office of Foreign Assets Control is also amending § 500.561 of the Regulations, which contains a statement of licensing policy regarding transfers of property under state abandoned property laws. The need for the amendment is that the transfer of blocked assets to state administration will interfere with the effective regulation of blocked property by the Office unless the responsible state agency can demonstrate its willingness and capacity to maintain accurate and complete records of blocked property in its custody, to hold the blocked assets in identifiable accounts with a separate index, and to comply with the requirements of §§ 500.205 and 500.611. The effect of the amendment is that management of blocked assets held in custodial capacity by state abandoned property agencies will be more consistent with U.S. policy interests in such assets.

Assets blocked by virtue of an interest therein of the People's Republic of China or any national thereof will no longer be transferable under the state abandoned property laws.

EFFECTIVE DATE: March 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Dennis M. O'Connell, Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury (202) 376-0236.

SUPPLEMENTARY INFORMATION: Since these amendments involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation and a delay in effective date are inapplicable. However, because of the technical nature of the regulations, a 30-day comment period was provided. The regulations are now being published in final form, effective immediately.

SUMMARY OF CHANGES FROM THE PROPOSED VERSION

The Office received comments from nineteen private individuals or firms, from six offices or agencies of the Federal government, and from administrators or outside counsel for ten state treasuries or abandoned property agencies. Following a review of the comments, the following aspects of the amendments changed significantly from the proposed version of the regulations:

(1) The provisions of § 500.205 will apply to assets held by the federal government or any agency or instrumentality thereof, provided however, that any agency or instrumentality which submits to the Office an opinion of its General Counsel that it lacks the statutory authority to comply, or that the interest requirement is inconsistent with the statutory scheme under which the agency or instrumentality functions, will be exempted from the requirements of § 500.205.

(2) Under § 500.205(b), assets subject to paragraph (a) but not presently held in interest-bearing status must be transferred within 30 days, not five days as stated in the proposed regulation.

(3) The definition of "interest-bearing account" includes, as a minimum, the maximum rate payable on the shortest time deposit in the domestic bank in which the account is held, but may include, as appropriate, higher-yielding instruments such as six-month Treasury bills or insured six-month certificates.

(4) The provisions of § 500.205(c), requiring collection on blocked checks and drafts, requires presentment and collection wherever possible consistent with state law, but also sets forth specific guidelines for presentment and collection with respect to such instruments as cashier's checks, money orders, traveler's checks, and personal checks drawn on presently active accounts.

(5) A new paragraph (f) has been added to § 500.205 giving an exemption from the requirements of paragraphs (a) and (b) to any state abandoned property agency meeting the requirements of amended § 500.561, provided the agency credits interest to the blocked assets held by it. Otherwise, the agency must hold the assets in an interest-bearing account in a domestic bank on the same basis as other holders.

(6) The provisions of § 500.561, setting forth the licensing policy for transfers of abandoned property under state law, are being amended, rather than revoked as originally proposed, to bring that policy into line with the requirements of § 500.205 and with other underlying objectives of the Regulations. However, assets blocked by virtue of an interest therein of the People's Republic of China or any national thereof henceforth are excluded from transfer to State agencies.

(7) The report required by § 500.611 will be due in 90 days after a notice of the availability of printed copies of the forms is published in the FEDERAL REGISTER.

INTEREST REQUIREMENT

As pointed out in the proposal, information available to the Treasury Department indicated that, in certain cases, blocked bank accounts may have already been transferred at the owner's request from demand to interest-bearing status. In other cases, the depository institution may have already made such a transfer on its own initiative, in recognition of the inequity of holding the funds in demand status and earning income on the funds while the depositor has not had the effective power to demand withdrawal. For example, the comment period revealed a situation where a company holding funds owed to a designated national invested the account in high-yielding obligations significantly increasing the value of the account. However, a substantial amount of funds blocked under the Regulations is still being held by banks and other persons in non-interest-bearing status.

To clarify the situation, in the interest of preserving the assets, paragraph (a) of § 500.205 requires the holding of certain property identified in paragraph (h) in interest-bearing accounts in domestic banks. Any further holding of such assets without crediting interest thereto is prohibited.

Paragraph (b) requires any person not presently holding funds in compliance with paragraph (a) to cause such funds to be held in interest-bearing accounts in any domestic bank within 30 days of the effective date of this section.

The Board of Governors of the Federal Reserve System was advised of the effect that these amendments would have on U.S. banks. At an open meeting on November 1, 1978, the Board concluded that the Federal Reserve regulations pose no bar to the Treasury proposal implemented by these amendments.

BLOCKED CHECKS AND DRAFTS

Paragraph (c) requires that any person holding checks or drafts which are presently blocked shall collect on these instruments and credit the proceeds to a blocked, interest-bearing account. However, the obligation of the holder to collect on blocked checks and drafts is qualified by the statement that this obligation is to be met wherever possible consistent with state law, except in situations covered by the following specific guidelines.

In the case of a blocked check or draft which has been purchased by the maker/drawer from the drawee bank (*e.g.*, cashier's check, money order, or traveler's check), or which is drawn on a presently active account, such bank, on presentment of the instrument in accordance with the provisions of this section, shall either (1) pay the instrument (the proceeds themselves being blocked assets), or (2) credit a blocked account on its books with the amount payable on the instrument. Such a blocked account shall be identified as resulting from the proceeds of a blocked check or draft, and the identification shall include a reference to the names of both the maker and payee of the instrument. All transactions by any person, incident to the negotiation, processing, presentment, collection or payment of such instruments are authorized.

EXCEPTIONS TO THE REQUIREMENT

Paragraphs (d), (e) and (f) specify certain exceptions to the basic interest prohibition and directive.

Paragraph (d) defers the immediate effect of the interest requirement as to the amount of any set-off claimed against the owner by the holder of the funds. For example, if a corporation holds blocked on its own books a debt of $500,000 owed to a blocked national, but is owed $100,000 by that national, paragraph (d) exempts $100,000 from the transfer directive. The $100,000 against which the holder has a set-off, as well as the $400,000 that must be transferred, remains blocked. However, any use of this exemption is subject to a duty to pay interest from 30 days after the effective date of this regulation, if the set-off is ultimately determined (by any competent judicial, quasi-judicial or administrative body) to be without merit.

Institutions holding blocked funds include broker/dealers holding cash balances in customers' securities accounts. Paragraph (e) exempts such balances from transfer to domestic banks, provided interest is credited to the accounts by the holders.

Paragraph (f) provides that property subject to paragraphs (a) and (b) of this section, held by a state agency responsible for abandoned and unclaimed property and licensed to receive such property under § 500.561, may continue to be held by such agency provided the agency credits interest to the blocked account in which the property is held or holds the property in a domestic bank in accordance with the provisions of the section.

DEFINITIONS

Paragraph (g) defines "interest-bearing account" as a blocked account earning interest at not less than the maximum rate payable on the shortest time deposit available in the bank where the account is held. Where appropriate, assets subject to the requirements of paragraphs (a), (b) and (c) may be held in higher yielding instruments such as six-month Treasury bills.

Paragraph (h) identifies the types of property subject to the requirements of paragraphs (a) and (b); namely, currency; bank deposits and bank accounts; undisputed and either liquidated or matured debts, claims, obligations or other evidence of indebtedness, to the extent of any amount that is undisputed and either liquidated or matured; and any proceeds resulting from the payment of any obligation under paragraph (c) above.

Paragraph (i) provides that, for purposes of this section, the term "domestic bank" includes any FSLIC-insured institution.

Paragraph (j) provides that, for purposes of this section, the term "person" includes the United States Government or any agency or instrumentality thereof, except where the General Counsel of the agency or instrumentality submits to the Office an opinion to the effect that either (1) the agency or instrumentality lacks the statutory authority to comply with the section, or (2) the interest requirement is inconsistent with the statutory scheme under which the agency or instrumentality functions.

EFFECT OF THE REGULATION WITH RESPECT TO OTHER CLAIMS

Several comments raised the question of the effect, if any, of § 500.205 on any right or claim by the owner of blocked assets or any other person having an interest therein to seek interest, profits or compensation of any kind for the holding and use of such assets in a non-interest-bearing status from the date of blocking to the effective date of § 500.205. Section 500.205 does not address and was not intended to affect the issue of past liability for interest on demand accounts or similar blocked property.

It should also be noted that implementation of § 500.205 is intended to enhance the value of the funds without affecting the owner's interest therein. Under the provisions of Section 5(b) of the Trading With the Enemy Act, holders of blocked property subject to this regulation shall not be liable for anything done or omitted in good faith in reliance thereon.

STATE ABANDONED PROPERTY AGENCIES

With regard to the proposed revocation of § 500.561, containing the statement of licensing policy on transfers of abandoned property under state law, Treasury notified states having licenses that the licenses were suspended pending a review of whether the policy will be continued. Among other matters, Treasury's reconsideration of the policy was prompted by information that the condition stated in § 500.561 that blocked assets be separately indexed and maintained has not been complied with by state abandoned property administrations to which licenses have been issued. It was

believed that effective control of the assets by the Office of Foreign Assets Control might more readily be maintained if the assets remain in the custody of private institutions such as banks and brokers than if they were transferred to state agencies.

Comments on the proposal were received from a number of state agencies, as well as from private counsel for two state abandoned property agencies and for a large holder of blocked assets. State agencies holding existing licenses to receive transfers of blocked assets, among others, urged the retention of the existing policy of permitting transfers of blocked assets to state agencies under license. These respondents claimed an ability to comply with both the new interest requirement and with a requirement for separate identification and indexing of blocked accounts and other recordkeeping requirements. Other states cited legal and practical difficulties, including additional costs, in complying with the requirements.

Upon review of these comments, the Office of Foreign Assets Control has decided to retain § 500.561. However, the Section is being amended to conform the statement of licensing policy to the new interest requirement and to correct the administrative problems of recordkeeping on blocked assets that have occurred in the past. In the future, in order to qualify for a license, a state agency must demonstrate that it has the legal authority to pay interest on blocked accounts held by it or to hold such accounts in a domestic bank in accordance with § 500.205. Such a showing shall include an opinion of the state attorney general that such legal authority exists.

If subsequent to such a showing the authority of the state agency in this regard is in any way substantially revoked or impaired, the license will be revoked and the exception provided by § 500.205(f) will no longer be available.

Further, the amendment clarifies the recordkeeping obligation of state agencies. Blocked assets must be separately identified and indexed in a manner that will facilitate prompt and accurate responses to inquiries from the Office of Foreign Assets Control. Such recordkeeping requirements are incorporated in and made a part of licenses issued under the section including licenses issued prior to the effective date of the amendments.

However, with respect to assets blocked by virtue of an interest therein of the People's Republic of China or any national thereof, no licenses will be issued, and existing licenses are amended so as to exclude such assets from their authorizations.

REPORTING REQUIREMENT

Section § 500.611 requires that any person holding property subject to the requirements of § 500.205, including property with respect to which an exemption is claimed, must submit a report on Form TFR-611.

It is believed that this form will provide Treasury with very useful data on blocked assets. It will provide Treasury with a check on the implementation of, and compliance with, the requirement to transfer blocked funds into interest-bearing status. Information on the amounts of funds subject to the regulation and the rate of interest being paid thereon is essential for policy planning purposes.

With respect to assets subject to the regulation which were reported during a prior census of blocked property, the new report may supply important information regarding changes in the amount, type, and holder of the assets since the relevant census. Furthermore, the reports may bring to the attention of Treasury blocked accounts not previously reported in any manner.

In addition, in light of the exemptions offered by paragraphs (d), (e), and (f) from the provisions of paragraphs (a) and (b), the reporting requirement will provide a simple means of reviewing situations in which an exemption is being claimed.

Though § 500.611 is now published in final form, the reporting form, the reporting form, TFR-611, is currently being revised based on comments received during the comment period. The final version of the form, with instructions for reporters, is expected to be available in the near future. In the interim, Section 500.611 gives reporters notice of the reporting requirement and of the information that will be required. Reports will be due on Form TFR-611 within 90 days after a notice of the availability of the form is published in the FEDERAL REGISTER. Copies will be mailed to persons on the Office of Foreign Assets Control mailing list and will be made available through Federal Reserve Banks and other banks.

LEGAL AUTHORITY

Some of the comments asked under what legal authority the amendments were being issued. The basic authority is Section 5(b) of the Trading With the Enemy Act. Pub. L. 95-223, enacted December 28, 1977, grandfathered Section 5(b) authorities with respect to all countries affected by these Regulations. Under the provisions of Section 101(b) of Pub. L. 95-223, these authorities remain in effect for successive one-year periods so long as the President determines that their continuation is in the national interest. The President has made such a determination that the authorities should continue until September 14, 1979. (43 FR. 40449)

1. 31 CFR Part 500 is amended by the addition of § 500.205 as follows:

§ 500.205 Holding of certain types of blocked property in interest-bearing accounts.

(a) Except as provided by paragraphs (d), (e) and (f) of this section, or as authorized by the Secretary of the Treasury or his delegate by specific license, any person holding any property included in paragraph (h) of this section is prohibited from holding, withholding, using, transferring, engaging in any transactions involving, or exercising any right, power, or privilege with respect to any such property, unless it is held in an interest-bearing account in a domestic bank.

(b) Any person presently holding property subject to the provisions of paragraph (a) of this section which, as of the effective date of this section, is not being held in accordance with the provisions of that paragraph, shall transfer such property to or hold such property or cause such property to be held in an interest-bearing account in any domestic bank within 30 days of the effective date of this section.

(c) Any person holding any checks or drafts subject to the provisions of § 500.201 is authorized and directed, wherever possible consistent with state law (except as otherwise specifically provided in subparagraph (3) of this paragraph), to negotiate or present for collection or payment such instruments and credit the proceeds to interest-bearing accounts. Any transaction by any person incident to the negotiation, processing, presentment, collection or payment of such instruments and deposit of the proceeds into an interest-bearing account is hereby authorized: *Provided*, That:

(1) The transaction does not represent, directly or indirectly, a transfer of the interest of a designated national to any other country or person;

(2) The proceeds are held in a blocked account indicating the designated national who is the payee or owner of the instrument; and,

(3) In the case of a blocked check or draft which has been purchased by the maker/drawer from the drawee bank (*e.g.*, cashier's check, money order, or traveler's check) or which is drawn against a presently existing account, such bank, on presentment of the instrument in accordance with the provisions of this section, shall either (i) pay the instrument (subject to subparagraphs (1) and (2) of this paragraph) or (ii) credit a blocked account on its books with the amount payable on the instrument. In either event, the blocked account shall be identified as

resulting from the proceeds of a blocked check or draft, and the identification shall include a reference to the names of both the maker and payee of the instrument.

(d) Property subject to the provisions of paragraphs (a) or (b) of this section, held by a person claiming a set-off against such property, is exempt from the provisions of paragraphs (a), (b) and (c) of this section to the extent of the set-off: *Provided however,* That interest shall be due from 30 days after the effective date of this section if it should ultimately be determined that the claim to a set-off is without merit.

(e) Property subject to the provisions of paragraphs (a) and (b) of this section, held in a customer's account by a registered broker/dealer in securities, may continue to be held for the customer by the broker/dealer provided interest is credited to the account on any balance not invested in securities in accordance with § 500.513. The interest paid on such accounts by a broker/dealer who does not elect to hold such property for a customer's account in a domestic bank shall not be less than the maximum rate payable on the shortest time deposit available in any domestic bank in the jurisdiction in which the broker/dealer holds the account.

(f) Property subject to the provisions of paragraphs (a) and (b) of this section, held by a state agency charged with the custody of abandoned or unclaimed property under § 500.561 may continue to be held by the agency provided interest is credited to the blocked account in which the property is held by the agency, or the property is held by the agency in a blocked account in a domestic bank. The interest credited to such accounts by an agency which does not elect to hold such property in a domestic bank shall not be less than the maximum rate payable on the shortest time deposit available in any domestic bank in the state.

(g) For purposes of this section, the term "interest-bearing account" means a blocked account earning interest at no less than the maximum rate payable on the shortest time deposit in the domestic bank where the account is held, provided however, that such an account may include six-month Treasury bills or insured certificates, with a maturity not exceeding six-months, appropriate to the amounts involved.

(h) The following types of property are subject to paragraphs (a) and (b) of this section:

(1) Any currency, bank deposit and bank accounts subject to the provisions of § 500.201;

(2) Any property subject to the provisions of § 500.201 which consists, in whole or in part, of undisputed and either liquidated or matured debts, claims, obligations or other evidence of indebtedness, to the extent of any amount that is undisputed and liquidated or matured; and,

(3) Any proceeds resulting from the payment of an obligation under paragraph (c) of this section.

(i) For purposes of this section, the term "domestic bank" includes any FSLIC-insured institution (as defined in 12 CFR 561.1).

(j) For the purposes of this section the term "person" includes the United States Government or any agency or instrumentality thereof, except where the agency or instrumentality submits to the Office of Foreign Assets Control an opinion of its General Counsel that either (1) it lacks statutory authority to comply with this section, or (2) the requirements of paragraphs (a) and (b) of this section are inconsistent with the statutory program under which it operates.

2. Section 500.561 is amended as follows:

§ 500.561 Transfers of abandoned property under State law.

(a) Except as stated in paragraphs (b) and (c) of this section, specific licenses are not issued authorizing the transfer of blocked property to State agencies under State laws governing abandoned property.

(b) Specific licenses are issued authorizing the transfer of blocked property, pursuant to the laws of the State governing abandoned property, to the appropriate State agency. *Provided,* That the State's laws are custodial in nature, *i.e.,* there is no permanent transfer of beneficial interest to the State. Licenses require the property to be held by the State in accounts which are identified as blocked under the regulations. A separate index of these blocked assets is required to be maintained by the State agency. The requirements of this section for identification and separate indexing of blocked assets apply to all blocked assets held by State agencies and any licenses issued prior to the effective date of this section hereby are amended by the incorporation of such requirements.

(c) To be eligible for a specific license under this section, the state agency must demonstrate that it has the statutory authority under appropriate state law to comply with the requirements of § 500.205. Such a showing shall include an opinion of the State Attorney General that such statutory authority exists.

(d) No licenses will be issued for the transfer to State agencies of any property blocked by virtue of an interest therein of the People's Republic of China or any national thereof.

(e) Any license issued prior to the effective date of this section which authorizes the transfer of property blocked by virtue of an interest of the People's Republic of China or any national thereof, is hereby revoked to that extent.

3. Section 500.611 is added to read as follows:

§ 500.611 Reports concerning property subject to § 500.205.

(a) Any person holding property to which § 500.205 applies, including property as to which an exemption under § 500.205 (d), (e) or (f) is claimed, is hereby required to submit a report on Form TFR-611 concerning such property, containing the following information:

(1) The name of the person for whom or for whose benefit the property is being held;

(2) The nature of the interest of the designated country or national thereof in the property so held;

(3) The original amount and type of such property in each case;

(4) The location and other identifying information, including account numbers, of such account;

(5) The rate of interest being paid thereon at the time of the report, the date from which interest was credited, and the rates of interest during different periods if changes were made prior to the report;

(6) The current balance in the account;

(7) The exemption claimed under Section 500.205, if any, and,

(8) The date of any previous report concerning the property filed with the Office of Foreign Assets Control under §500.610 (1970 Census of Chinese Assets).

(b) Reports required by paragraph (a) of this section shall be prepared in duplicate. Within 90 days of the date that notice of the availability of Form TFR-611 is published, both copies shall be sent in a set to Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220. Form TFR-611, with reporting instructions, can be obtained from the Office of Foreign Assets Control or from the Federal Reserve Bank of New York, 33 Liberty Street, New York, New York 10045.

(c) Reports filed in accordance with this section are regarded as containing commercial and financial information that is privileged and/or confidential.

(Sec. 5, 40 Stat. 415, as amended; (50 U.S.C. App. 5), E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1945–1948 Comp., p. 748.)

Dated: February 15, 1979.

STANLEY L. SOMMERFIELD,
Acting Director.

Approved:

RICHARD J. DAVIS,
Assistant Secretary.

[FR Doc. 79-6240 Filed 3-1-79; 8:45 am]

[4810-25-M]

PART 515—CUBAN ASSETS CONTROL REGULATIONS

Holding of Blocked Funds in Interest-Bearing Accounts

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending its Cuban Assets Control Regulations by the addition of §§ 515.205 and 515.611. The purpose of § 515.205 is to require any person holding certain types of blocked assets to hold the property in an interest-bearing account. The need for the amendment is that the holding of such assets in non-interest-bearing status is inconsistent with good management of the property and with the policy objectives of the Regulations. The effect of the amendment is that most types of blocked assets henceforth will be held in interest-bearing status, the holding of blocked funds in non-interest-bearing status being prohibited.

The purpose of § 515.611 is to require persons subject to § 515.205 to report on a one-time basis on the nature of blocked assets affected thereby. The need for the amendment is that such information is not now readily available, and the amendment will have the effect of improving administration and control of blocked assets by providing such information in simple, efficient and usable form.

In addition, the Office of Foreign Assets Control is also amending § 515.554 of the Regulations, which contains a statement of licensing policy regarding transfers of property under state abandoned property laws. The need for the amendment is that the transfer of blocked assets to state administration will interfere with the effective regulation of blocked property by the Office unless the responsible state agency can demonstrate its willingness and capacity to maintain accurate and complete records of blocked property in its custody, to hold the blocked assets in identifiable accounts with a separate index, and to comply with the requirements of §§ 515.205 and 515.611. The effect of the amendment is that management of blocked assets held in custodial capacity by state abandoned property agencies will be more consistent with U.S. policy interests in such assets.

EFFECTIVE DATE: March 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Dennis M. O'Connell, Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury (202) 376-0236.

SUPPLEMENTARY INFORMATION: Since these amendments involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation and a delay in effective date are inapplicable. However, because of the technical nature of the regulations, a 30-day comment period was provided. The regulations are now being published in final form, effective immediately.

SUMMARY OF CHANGES FROM THE PROPOSED VERSION

The Office received comments from nineteen private individuals or firms, from six offices or agencies of the Federal Government, and from administrators or outside counsel for ten state treasuries or abandoned property agencies. Following a review of the comments, the following aspects of the amendments changed significantly from the proposed version of the regulations:

(1) The provisions of § 515.205 will apply to assets held by the Federal Government or any agency or instrumentality thereof. *Provided however,* That any agency or instrumentality which submits to the Office an opinion of its General Counsel that it lacks the statutory authority to comply, or that the interest requirement is inconsistent with the statutory scheme under which the agency or instrumentality functions, will be exempted from the requirements of § 515.205.

(2) Under § 515.205(b), assets subject to paragraph (a) but not presently held in interest-bearing status must be transferred within 30 days, not five days as stated in the proposed regulation.

(3) The definition of "interest-bearing account" includes, as a minimum, the maximum rate payable on the shortest time deposit in the domestic bank in which the account is held but may include, as appropriate, higher-yielding instruments such as six-month Treasury bills or insured six-month certificates.

(4) The provisions of § 515.205(c), requiring collection on blocked checks and drafts, requires presentment and collection wherever possible consistent with state law, but also sets forth specific guidelines for presentment and collection with respect to such instruments as cashier's checks, money orders, traveler's checks, and personal checks drawn on presently active accounts.

(5) A new paragraph (f) has been added to § 515.205 giving an exemption from the requirements of paragraphs (a) and (b) to any state abandonded property agency meeting the requirements of amended § 515.554, provided the agency credits interests to the blocked assets held by it. Otherwise, the agency must hold the assets in an interest-bearing account in a domestic bank on the same basis as other holders.

(6) The provisions of § 515.554, setting forth the licensing policy for transfers of abandoned property under state law, are being amended, rather than revoked as originally proposed, to bring that policy into line with the requirements of § 515.205 and with other underlying objectives of the regulations.

(7) The report required by § 515.611 will be due in 90 days after a notice of the availability of printed copies of the forms is published in the FEDERAL REGISTER.

INTEREST REQUIREMENT

As pointed out in the proposal, information available to the Treasury Department indicated that, in certain cases, blocked bank accounts may have already been transferred at the owner's request from demand to interest-bearing status. In other cases, the depository institution may have already made such a transfer on its own initiative, in recognition of the inequity of holding the funds in demand status and earning income on the funds while the depositor has not had the effective power to demand withdrawal. For example, the comment period revealed a situation where a company holding funds owed to a designated national invested the account in high-yielding obligations significantly increasing the value of the account. However, a substantial amount of funds blocked under the Regulations is still being held by banks and other persons in non-interest-bearing status.

To clarify the situation, in the interest of preserving the assets, paragraph (a) of § 515.205 requires the holding of certain property identified in paragraph (h) in interest-bearing accounts in domestic banks. Any further holding of such assets without crediting interest thereto is prohibited.

Paragraph (b) requires any person not presently holding funds in compliance with paragraph (a) to cause such funds to be held in interest-bearing accounts in any domestic bank within 30 days of the effective date of this section.

The Board of Governors of the Federal Reserve System was advised of the effect that these amendments would have on U.S. banks. At an open meeting on November 1, 1978, the

Board concluded that the Federal Reserve regulations pose no bar to the Treasury proposal implemented by these amendments.

BLOCKED CHECKS AND DRAFTS

Paragraph (c) requires that any person holding checks or drafts which are presently blocked shall collect on these instruments and credit the proceeds to a blocked, interest bearing account. However, the obligation of the holder to collect on blocked checks and drafts is qualified by the statement that this obligation is to be met wherever possible consistent with state law, except in situations covered by the following specific guidelines.

In the case of a blocked check or draft which has been purchased by the maker/drawer from the drawee bank (*e.g.*, cashier's check, money order, or traveler's check), or which is drawn on a presently active account, such bank, on presentment of the instrument in accordance with the provisions of this section, shall either (1) pay the instrument (the proceeds themselves being blocked assets), or (2) credit a blocked account on its books with the amount payable on the instrument. Such a blocked account shall be identified as resulting from the proceeds of a blocked check or draft, and the identification shall include a reference to the names of both the maker and payee of the instrument. All transactions by any person, incident to the negotiation, processing, presentment, collection or payment of such instruments are authorized.

EXCEPTIONS TO THE REQUIREMENT

Paragraphs (d), (e) and (f) specify certain exceptions to the basic interest prohibition and directive.

Paragraph (d) defers the immediate effect of the interest requirement as to the amount of any set-off claimed against the owner by the holder of the funds. For example, if a corporation holds blocked on its own books a debt of $500,000 owed to a blocked national, but is owed $100,000 by that national, paragraph (d) exempts $100,000 from the transfer directive. The $100,000 against which the holder has a setoff, as well as the $400,000 that must be transferred, remains blocked. However, any use of this exemption is subject to a duty to pay interest from 30 days after the effective date of this regulation, if the set-off is ultimately determined (by any competent judicial, quasi-judicial or administrative body) to be without merit.

Institutions holding blocked funds include broker/dealers holding cash balances in customers' securities accounts. Paragraph (e) exempts such balances from transfer to domestic banks, provided interest is credited to the accounts by the holders.

Paragraph (f) provides that property subject to paragraphs (a) and (b) of this section, held by a state agency responsible for abandoned and unclaimed property and licensed to receive such property under § 515.554, may continue to be held by such agency provided the agency credits interest to the blocked account in which the property is held or holds the property in a domestic bank in accordance with the provisions of the section.

DEFINITIONS

Paragraph (g) defines "interest-bearing account" as a blocked account earning interest at not less than the maximum rate payable on the shortest time deposit available in the bank where the account is held. Where appropriate, assets subject to the requirements of paragraphs (a), (b) and (c) may be held in higher yielding instruments such as six-month Treasury bills.

Paragraph (h) identifies the types of property subject to the requirements of paragraphs (a) and (b); namely, currency; bank deposits and bank accounts; undisputed and either liquidated or matured debts, claims, obligations or other evidence of indebtedness, to the extent of any amount that is undisputed and either liquidated or matured; and any proceeds resulting from the payment of any obligation under paragraph (c) above.

Paragraph (i) provides that, for purposes of this section, the term "domestic bank" includes any FSLIC-insured institution.

Paragraph (j) provides that, for purposes of this section, the term "person" includes the United States Government or any agency or instrumentality thereof, except where the General Counsel of the agency or instrumentality submits to the Office an opinion to the effect that either (1) the agency or instrumentality lacks the statutory authority to comply with the section, or (2) the interest requirement is inconsistent with the statutory scheme under which the agency or instrumentality functions.

EFFECT OF THE REGULATION WITH RESPECT TO OTHER CLAIMS

Several comments raised the question of the effect, if any, of § 515.205 on any right or claim by the owner of blocked assets or any other person having an interest therein to seek interest, profits or compensation of any kind for the holding and use of such assets in a non-interest-bearing status from the date of blocking to the effective date of § 515.205. Section 515.205 does not address and was not intended to affect the issue of past liability for interest on demand accounts or similar blocked property.

It should also be noted that implementation of § 515.205 is intended to enhance the value of the funds without affecting the owner's interest therein. Under the provisions of Section 5(b) of the Trading With the Enemy Act, holders of blocked property subject to this regulation shall not be liable for anything done or omitted in good faith in reliance thereon.

STATE ABANDONED PROPERTY AGENCIES

With regard to the proposed revocation of § 515.554, containing the statement of licensing policy on transfers of abandoned property under state law, Treasury notified states having licenses that the licenses were suspended pending a review of whether the policy will be continued. Among other matters, Treasury's reconsideration of the policy was prompted by information that the condition stated in § 515.554 that blocked assets be separately indexed and maintained has not been complied with by state abandoned property administrations to which licenses have been issued. It was believed that effective control of the assets by the Office of Foreign Assets Control might more readily be maintained if the assets remain in the custody of private instutions such as banks and brokers than if they were transferred to state agencies.

Comments on the proposal were received from a number of state agencies, as well as from private counsel for two state abandoned property agencies and for a large holder of blocked assets. State agencies holding existing licenses to receive transfers of blocked assets, among others, urged the retention of the existing policy of permitting transfers of blocked assets to state agencies under license. These respondents claimed an ability to comply with both the new interest requirement and with a requirement for separate identification and indexing of blocked accounts and other recordkeeping requirements. Other states cited legal and practical difficulties, including additional costs, in complying with the requirements.

Upon review of these comments, the Office of Foreign Assets Control has decided to retain § 515.554. However, the Section is being amended to conform the statement of licensing policy to the new interest requirement and to correct the administrative problems of recordkeeping on blocked assets that have occurred in the past. In the future, in order to qualify for a license, a state agency must demonstrate that it has the legal authority to pay interest on blocked accounts held by it or to hold such accounts in a domestic bank in accordance with § 515.205. Such a showing shall include an opinion of the state attorney general that such legal authority exists.

If subsequent to such a showing the authority of the state agency in this regard is in any way substantially revoked or impaired, the license will be revoked and the exception provided by § 515.205(f) will no longer be available.

Further, the amendment clarifies the recordkeeping obligation of state agencies. Blocked assets must be separately identified and indexed in a manner that will facilitate prompt and accurate responses to inquiries from the Office of Foreign Assets Control. Such recordkeeping requirements are incorporated in and made a part of licenses issued under the section including licenses issued prior to the effective date of the amendments.

REPORTING REQUIREMENT

Section 515.611 requires that any person holding property subject to the requirements of § 515.205, including property with respect to which an exemption is claimed, must submit a report on Form TFR-611.

It is believed that this form will provide Treasury with very useful data on blocked assets. It will provide Treasury with a check on the implementation of, and compliance with, the requirement to transfer blocked funds into interest-bearing status. Information on the amounts of funds subject to the regulation and the rate of interest being paid thereon is essential for policy planning purposes.

With respect to assets subject to the regulation which were reported during a prior census of blocked property, the new report may supply important information regarding changes in the amount, type, and holder of the assets since the relevant census. Furthermore, the reports may bring to the attention of Treasury blocked accounts not previously reported in any manner.

In addition, in light of the exemptions offered by paragraphs (d), (e) and (f) from the provisions of paragraphs (a) and (b), the reporting requirement will provide a simple means of reviewing situations in which an exemption is being claimed.

Though § 515.611 is now published in final form, the reporting form, TFR-611, is currently being revised based on comments received during the comment period. The final version of the form, with instructions for reporters, is expected to be available in the near future. In the interim, § 515.611 gives reporters notice of the reporting requirement and of the information that will be required. Reports will be due on Form TFR-611 within 90 days after a notice of the availability of the form is published in the FEDERAL REGISTER. Copies will be mailed to persons on the Office of Foreign Assets Control mailing list and will be made available through Federal Reserve Banks and other banks.

LEGAL AUTHORITY

Some of the comments asked under what legal authority the amendments were being issued. The basic authority is Section 5(b) of the Trading With the Enemy Act. Pub. L. 95-223, enacted December 28, 1977, grandfathered Section 5(b) authorities with respect to all countries affected by these Regulations. Under the provisions of Section 101(b) of Pub. L. 95-223, these authorities remain in effect for successive one-year periods so long as the President determines that their continuation is in the national interest. The President has made such a determination that the authorities should continue until September 14, 1979. (43 FR 40449)

1. 31 CFR Part 515 is amended by the addition of § 515.205 as follows:

§ 515.205 Holding of certain types of blocked property in interest-bearing accounts.

(a) Except as provided by paragraphs (d), (e) and (f) of this section, or as authorized by the Secretary of the Treasury or his delegate by specific license, any person holding any property included in paragraph (h) of this section is prohibited from holding, withholding, using, transferring, engaging in any transactions involving, or exercising any right, power, or privilege with respect to any such property, unless it is held in an interest-bearing account in a domestic bank.

(b) Any person presently holding property subject to the provisions of paragraph (a) of this section which, as of the effective date of this section, is not being held in accordance with the provisions of that paragraph shall transfer such property to or hold such property or cause such property to be held in an interest-bearing account in any domestic bank within 30 days of the effective date of this section.

(c) Any person holding any checks or drafts subject to the provisions of § 515.201 is authorized and directed, wherever possible consistent with state law (except as otherwise specifically provided in subparagraph (3) of this paragraph), to negotiate or present for collection or payment such instruments and credit the proceeds to interest-bearing accounts. Any transaction by any person incident to the negotiation, processing, presentment, collection or payment of such instruments and deposit of the proceeds into an interest-bearing account is hereby authorized: *Provided that:*

(1) The transaction does not represent, directly or indirectly, a transfer of the interest of a designated national to any other country or person;

(2) The proceeds are held in a blocked account indicating the designated national who is the payee or owner of the instrument; and,

(3) In the case of a blocked check or draft which has been purchased by the maker/drawer from the drawee bank (*e.g.*, cashier's check, money order, or traveler's check) or which is drawn against a presently existing account, such bank, on presentment of the instrument in accordance with the provisions of this section, shall either (i) pay the instrument (subject to subparagraphs (1) and (2) of this paragraph) or (ii) credit a blocked account on its books with the amount payable on the instrument. In either event, the blocked account shall be identified as resulting from the proceeds of a blocked check or draft, and the identification shall include a reference to the names of both the maker and payee of the instrument.

(d) Property subject to the provisions of paragraphs (a) or (b) of this section, held by a person claiming a set-off against such property, is exempt from the provisions of paragraphs (a), (b) and (c) of this section to the extent of the set-off: *Provided however,* That interest shall be due from 30 days after the effective date of this section if it should ultimately be determined that the claim to a set-off is without merit.

(e) Property subject to the provisions of paragraphs (a) and (b) of this section, held in a customer's account by a registered broker/dealer in securities, may continue to be held for the customer by the broker/dealer provided interest is credited to the account on any balance not invested in securities in accordance with § 515.513. The interest paid on such accounts by a broker/dealer who does not elect to hold such property for a customer's account in a domestic bank shall not be less than the maximum rate payable on the shortest time deposit available in any domestic bank in the jurisdiction in which the broker/dealer holds the account.

(f) Property subject to the provisions of paragraphs (a) and (b) of this section, held by a state agency charged with the custody of abandoned or unclaimed property under § 515.554 may continue to be held by the agency provided interest is credited to the blocked account in which the property is held by the agency, or the property is held by the agency in a blocked account in a domestic bank. The interest credited to such accounts by an agency which does not elect to hold such property in a domestic bank shall not be less than the maximum rate payable on the shortest time deposit available in any domestic bank in the state.

(g) For purposes of this section, the term "interest-bearing account" means a blocked account earning interest at no less than the maximum rate payable on the shortest time deposit in the domestic bank where the account is held: *Provided however,* That such an account may include six-month Treasury bills or insured certificates, with a maturity not exceeding six-months, appropriate to the amounts involved.

(h) The following types of property are subject to paragraphs (a) and (b) of this section:

(1) Any currency, bank deposit and bank accounts subject to the provisions of § 515.201;

(2) Any property subject to the provisions of § 515.201 which consists, in whole or in part, of undisputed and either liquidated or matured debts, claims, obligations or other evidence of indebtedness, to the extent of any amount that is undisputed and liquidated or matured; and,

(3) Any proceeds resulting from the payment of an obligation under paragraph (c) of this section.

(i) For purposes of this section, the term "domestic bank" includes any FSLIC-insured institution (as defined in 12-CFR 561.1).

(j) For the purposes of this section the term "person" includes the United States Government or any agency or instrumentality thereof, except where the agency or instrumentality submits to the Office of Foreign Assets Control an opinion of its General Counsel that either (1) it lacks statutory authority to comply with this section, or (2) the requirements of paragraphs (a) and (b) of this section are inconsistent with the statutory program under which it operates.

2. Section 515.554, is amended as follows:

§ 515.554 Transfers of abandoned property under State law.

(a) Except as stated in paragraphs (b) and (c) of this section, specific licenses are not issued authorizing the transfer of blocked property to State agencies under State laws governing abandoned property.

(b) Specific licenses are issued authorizing the transfer of blocked property, pursuant to the laws of the State governing abandoned property, to the appropriate State agency: *Provided,* That the State's laws are custodial in nature, *i.e.,* there is no permanent transfer of beneficial interest to the State. Licenses require the property to be held by the State in accounts which are identified as blocked under the regulations. A separate index of these blocked assets is required to be maintained by the State agency. The requirements of this section for identification and separate indexing of blocked assets apply to all blocked assets held by State agencies and any licenses issued prior to the effective date of this section hereby are amended by the incorporation of such requirements.

(c) To be eligible for a specific license under this section, the state agency must demonstrate that it has the statutory authority under appropriate state law to comply with the requirements of § 515.205. Such a showing shall include an opinion of the State Attorney General that such statutory authority exists.

3. Section 515.611 is added to read as follows:

§ 515.611 Reports concerning property subject to § 515.205.

(a) Any person holding property to which § 515.205 applies, including property as to which an exemption under § 515.205 (d), (e) or (f) is claimed, is hereby required to submit a report on Form TFR-611 concerning such property, containing the following information:

(1) The name of the person for whom or for whose benefit the property is being held;

(2) The nature of the interest of the designated country or national thereof in the property so held;

(3) The original amount and type of such property in each case;

(4) The location and other identifying information, including account numbers, of such account;

(5) The rate of interest being paid thereon at the time of the report, the date from which interest was credited, and the rates of interest during different periods if changes were made prior to the report;

(6) The current balance in the account;

(7) The exemption claimed under § 515.205, if any, and,

(8) The date of any previous report concerning the property filed with the Office of Foreign Assets Control under 31 CFR 515.607 and 515.608 (1964) (1963 Census of Cuban Assets).

(b) Reports required by paragraph (a) of this section shall be prepared in duplicate. Within 90 days of the date that notice of the availability of Form TFR-611 is published, both copies shall be sent in a set to Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220. Form TFR-611, with reporting instructions, can be obtained from the Office of Foreign Assets Control or from the Federal Reserve Bank of New York, 33 Liberty Street, New York, New York 10045.

(c) Reports filed in accordance with this section are regarded as containing commercial and financial information that is privileged and/or confidential.

(Sec. 5, 40 Stat. 415, as amended; 50 U.S.C. App. 5, Sec. 620(a), 75 Stat. 445; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR, 1959-1963 Comp., E.O. 9193, 7 FR 520, 3 CFR, Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748.)

Dated: February 15, 1979.

STANLEY L. SOMMERFIELD,
Acting Director.

Approved:

RICHARD J. DAVIS,
Assistant Secretary.

[FR Doc. 79-6241 Filed 3-1-79; 8:45 am]

[4810-25-M]

PART 520—FOREIGN FUNDS CONTROL REGULATIONS

Holding of Blocked Funds in Interest-Bearing Accounts

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending its Foreign Funds Control Regulations by the addition of §§ 520.05 and 520.611. The purpose of § 520.05 is to require any person holding certain types of blocked assets to hold the property in an interest-bearing account. The need for the amendment is that the holding of such assets in non-interest-bearing status is inconsistent with good management of the property and with the policy objectives of the Regulations. The effect of the amendment is that most types of blocked assets henceforth will be held in interest-bearing status, the holding of blocked funds in non-interest-bearing status being prohibited.

The purpose of § 520.611 is to require persons subject to § 520.05 to report on a one-time basis on the nature of blocked assets affected thereby. The need for the amendment is that such information is not now readily available, and the amendment will have the effect of improving administration and control of blocked assets by providing such information in simple, efficient and usable form.

EFFECTIVE DATE: March 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Dennis M. O'Connell, Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, (202) 376-0236.

SUPPLEMENTARY INFORMATION: Since these amendments involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation and a delay in ef-

fective date are inapplicable. However, because of the technical nature of the regulations, a 30-day comment period was provided. The regulations are now being published in final form, effective immediately.

SUMMARY OF CHANGES FROM THE PROPOSED VERSION

The Office received comments from nineteen private individuals or firms, from six offices or agencies of the federal government, and from administrators or outside counsel for ten state treasuries or abandoned property agencies. Following a review of the comments, the following aspects of the amendments changed significantly from the proposed version of the regulations:

(1) The provisions of § 520.05 will apply to assets held by the federal government or any agency or instrumentality thereof, provided however, that any agency or instrumentality which submits to the Office an opinion of its General Counsel that it lacks the statutory authority to comply, or that the interest requirement is inconsistent with the statutory scheme under which the agency or instrumentality functions, will be exempted from the requirements of § 520.05.

(2) Under § 520.05(b), assets subject to paragraph (a) but not presently held in interest-bearing status must be transferred within 30 days, not five days as stated in the proposed regulation.

(3) The definition of "interest-bearing account" includes, as a minimum, the maximum rate payable on the shortest time deposit in the domestic bank in which the account is held, but may include, as appropriate, higher-yielding instruments such as six-month Treasury bills or insured six-month certificates.

(4) The provisions of § 520.05(c), requiring collection on blocked checks and drafts, requires presentment and collection wherever possible consistent with state law, but also sets forth specific guidelines for presentment and collection with respect to such instruments as cashier's checks, money orders, traveler's checks, and personal checks drawn on presently active accounts.

(5) The report required by § 520.611 will be due in 90 days after a notice of the availability of printed copies of the forms is published in the FEDERAL REGISTER.

INTEREST REQUIREMENT

As pointed out in the proposal, information available to the Treasury Department indicated that, in certain cases, blocked bank accounts may have already been transferred at the owner's request from demand to interest-bearing status. In other cases, the depository institution may have already made such a transfer on its own initiative, in recognition of the inequity of holding the funds in demand status and earning income on the funds while the depositor has not had the effective power to demand withdrawal. For example, the comment period revealed a situation where a company holding funds owed to a designated national invested the account in high-yielding obligations significantly increasing the value of the account. However, a substantial amount of funds blocked under the Regulations is still being held by banks and other persons in non-interest-bearing status.

To clarify the situation, in the interest of preserving the assets, paragraph (a) of § 520.05 requires the holding of certain property identified in paragraph (g) in interest-bearing accounts in domestic banks. Any further holding of such assets without crediting interest thereto is prohibited.

Paragraph (b) requires any person not presently holding funds in compliance with paragraph (a) to cause such funds to be held in interest-bearing accounts in any domestic bank within 30 days of the effective date of this section.

The Board of Governors of the Federal Reserve System was advised of the effect that these amendments would have on U.S. banks. At an open meeting on November 1, 1978, the Board concluded that the Federal Reserve regulations pose no bar to the Treasury proposal implemented by these amendments.

BLOCKED CHECKS AND DRAFTS

Paragraph (c) requires that any person holding checks or drafts which are presently blocked shall collect on these instruments and credit the proceeds to a blocked, interest-bearing account. However, the obligation of the holder to collect on blocked checks and drafts is qualified by the statement that this obligation is to be met wherever possible consistent with state law, except in situations covered by the following specific guidelines.

In the case of a blocked check or draft which has been purchased by the maker/drawer from the drawee bank (*e.g.*, cashier's check, money order, or traveler's check), or which is drawn on a presently active account, such bank, on presentment of the instrument in accordance with the provisions of this section, shall either (1) pay the instrument (the proceeds themselves being blocked assets), or (2) credit a blocked account on its books with the amount payable on the instrument. Such a blocked account shall be identified as resulting from the proceeds of a blocked check or draft, and the identification shall include a reference to the names of both the maker and payee of the instrument. All transactions by any person, incident to the negotiation, processing, presentment, collection or payment of such instruments are authorized.

EXCEPTIONS TO THE REQUIREMENT

Paragraphs (d) and (e) specify certain exceptions to the basic interest prohibition and directive.

Paragraph (d) defers the immediate effect of the interest requirement as to the amount of any set-off claimed against the owner by the holder of the funds. For example, if a corporation holds blocked on its own books a debt of $500,000 owed to a blocked national, but is owed $100,000 by that national, paragraph (d) exempts $100,000 from the transfer directive. The $100,000 against which the holder has a set-off, as well as the $400,000 that must be transferred, remains blocked. However, any use of this exemption is subject to a duty to pay interest from 30 days after the effective date of this regulation, if the set-off is ultimately determined (by any competent judicial, quasi-judicial or administrative body) to be without merit.

Institutions holding blocked funds include broker/dealers holding cash balances in customers' securities accounts. Paragraph (e) exempts such balances from transfer to domestic banks, provided interest is credited to the accounts by the holders.

DEFINITIONS

Paragraph (f) defines "interest-bearing account" as a blocked account earning interest at not less than the maximum rate payable on the shortest time deposit available in the bank where the account is held. Where appropriate, assets subject to the requirements of paragraphs (a), (b) and (c) may be held in higher yielding instruments such as six-month Treasury bills.

Paragraph (g) identifies the types of property subject to the requirements of paragraphs (a) and (b); namely, currency; bank deposits and bank accounts; undisputed and either liquidated or matured debts, claims, obligations or other evidence of indebtness, to the extent of any amount that is undisputed and either liquidated or matured; and any proceeds resulting from the payment of any obligation under paragraph (c) above.

Paragraph (h) provides that, for purposes of this section, the term "domestic bank" includes any FSLIC-insured institution.

Paragraph (i) provides that, for purposes of this section, the term "person" includes the United States Government or any agency or instrumentality thereof, except where the General Counsel of the agency or in-

strumentality submits to the Office an opinion to the effect that either (1) the agency or instrumentality lacks the statutory authority to comply with the section, or (2) the interest requirement is inconsistent with the statutory scheme under which the agency or instrumentality functions.

EFFECT OF THE REGULATION WITH RESPECT TO OTHER CLAIMS

Several comments raised the question of the effect, if any, of § 520.05 on any right or claim by the owner of blocked assets or any other person having an interest therein to seek interest, profits or compensation of any kind for the holding and use of such assets in a non-interest-bearing status from the date of blocking to the effective date of § 520.05. Section 520.05 does not address and was not intended to affect the issue of past liability for interest on demand accounts or similar blocked property.

It should also be noted that implementation of § 520.05 is intended to enhance the value of the funds without affecting the owner's interest therein. Under the provisions of Section 5(b) of the Trading With the Enemy Act, holders of blocked property subject to this regulation shall not be liable for anything done or omitted in good faith in reliance thereon.

REPORTING REQUIREMENT

Section 520.611 requires that any person holding property subject to the requirements of § 520.05 including property with respect to which an exemption is claimed, must submit a report on Form TFR-611.

It is believed that this form will provide Treasury with very useful data on blocked assets. It will provide Treasury with a check on the implementation of, and compliance with, the requirement to transfer blocked funds into interest-bearing status. Information on the amounts of funds subject to the regulation and the rate of interest being paid thereon is essential for policy planning purposes.

With respect to assets subject to the regulation which were reported during a prior census of blocked property, the new report may supply important information regarding changes in the amount, type, and holder of the assets since the relevant census. Furthermore, the reports may bring to the attention to Treasury blocked accounts not previously reported in any manner.

In addition, in light of the exemptions offered by paragraphs (d) and (e) from the provisions of paragraphs (a) and (b), the reporting requirement will provide a simple means of reviewing situations in which an exemption is being claimed.

Though § 520.611 is now published in final form, the reporting form, TFR-611, is currently being revised based on comments received during the comment period. The final version of the form, with instructions for reporters, is expected to be available in the near future. In the interim, § 520.611 gives reporters notice of the reporting requirement and of the information that will be required. Reports will be due on Form TFR-611 within 90 days after a notice of the availability of the form is published in the FEDERAL REGISTER. Copies will be mailed to persons on the Office of Foreign Assets Control mailing list and will be made available through Federal Reserve Banks and other banks.

LEGAL AUTHORITY

Some of the comments asked under what legal authority the amendments were being issued. The basic authority is Section 5(b) of the Trading With the Enemy Act. Pub. L. 95-223, enacted December 28, 1977, grandfathered Section 5(b) authorities with respect to all countries affected by these Regulations. Under the provisions of Section 101(b) of Pub. L. 95-223, these authorities remain in effect for successive one-year periods so long as the President determines that their continuation is in the national interest. The President has made such a determination that the authorities should continue until September 14, 1979. (43 FR 40449)

1. 31 CFR Part 520 is amended by the addition of § 520.05 as follows:

§ 520.05 Holding of certain types of blocked property in interest-bearing accounts.

(a) Except as provided by paragraphs (d) and (e) of this section, or as authorized by the Secretary of the Treasury or his delegate by specific license, any person holding any property included in paragraph (g) of this section is prohibited from holding, withholding, using, transferring, engaging in any transactions involving, or exercising any right, power, or privilege with respect to any such property, unless it is held in an interest-bearing account in a domestic bank.

(b) Any person presently holding property subject to the provisions of paragraph (a) of this section which, as of the effective date of this section, is not being held in accordance with the provisions of that paragraph, shall transfer such property to or hold such property or cause such property to be held in an interest-bearing account in any domestic bank within 30 days of the effective date of this section.

(c) Any person holding any checks or drafts which remain blocked under the provisions of § 520.101(a)(1)-(5) is authorized and directed, wherever possible consistent with state law (except as otherwise specifically provided in subparagraph (3) of this paragraph), to negotiate or present for collection or payment such instruments and credit the proceeds to interest-bearing accounts. Any transaction by any person incident to the negotiation, processing, presentment, collection or payment of such instruments and deposit of the proceeds into interest-bearing account is hereby authorized: *Provided,* That:

(1) The transaction does not represent, directly or indirectly, a transfer of the interest of a designated national to any other country or person;

(2) The proceeds are held in a blocked account indicating the designated national who is the payee or owner of the instrument; and

(3) In the case of a blocked check or draft which has been purchased by the maker/drawer from the drawee bank (*e.g.,* cashier's check, money order, or traveler's check) or which is drawn against a presently existing account, such bank, on presentment of the instrument in accordance with the provisions of this section, shall either (i) pay the instrument (subject to subparagraphs (1) and (2) of this paragraph) or (ii) credit a blocked account on its books with the amount payable on the instrument. In either event, the blocked account shall be identified as resulting from the proceeds of a blocked check or draft, and the identification shall include a reference to the names of both the maker and payee of the instrument.

(d) Property subject to the provisions of paragraphs (a) or (b) of this section, held by a person claiming a set-off against such property, is exempt from the provisions of paragraphs (a), (b) and (c) of this section, to the extent of the set-off: *Provided however,* That interest shall be due from thirty days after the effective date of this section if it should ultimately be determined that the claim to a set-off is without merit.

(e) Property subject to the provisions of paragraphs (a) and (b) of this section, held in a customer's account by a registered broker/dealer in securities, may continue to be held for the customer by the broker/dealer provided interest is credited to the account on any balance not invested in securities in accordance with Section 520.4. The interest paid on such accounts by a broker/dealer who does not elect to hold such property for a customer's account in a domestic bank shall not be less than the maximum rate payable on the stortest time deposit available in any domestic bank in the jurisdiction in which the broker/dealer holds the account.

(f) For purposes of this section, the term "interest-bearing account" means a blocked account earning interest at no less than the maximum rate payable on the shortest time deposit in the domestic bank where the account is held: *Provided however,* That such an account may include six-month Treasury bills or insured certificates, with a maturity not exceeding six months, appropriate to the amounts involved.

(g) The following types of property are subject to paragraphs (a) and (b) of this section:

(1) Any currency, bank deposit and bank accounts which remain blocked under the provisions of § 520.101(a)(1)-(5);

(2) Any property which remains blocked under the provisions of § 520.101(a)(1)-(5) and which consists, in whole or in part, of undisputed and either liquidated or matured debts, claims, obligations or other evidence of indebtedness, to the extent of any amount that is undisputed and liquidated or matured; and,

(3) Any proceeds resulting from the payment of an obligation under paragraph (c) of this section.

(h) For purposes of this section, the term "domestic bank" includes any FSLIC-insured institution (as defined in 12 CFR 561.1).

(i) For the purposes of this section the term "person" includes the United States Government or any agency or instrumentality thereof, except where the agency or instrumentality submits to the Office of Foreign Assets Control an opinion of its General Counsel that either (1) it lacks statutory authority to comply with this section, or (2) the requirements of paragraphs (a) and (b) of this section are inconsistent with the statutory program under which it operates.

2. Section 520.611 is added to read as follows:

§ 520.611 Reports concerning property subject to § 520.05.

(a) Any person holding property to which § 520.05 applies, including property as to which an exemption under § 520.05 (d) or (e) is claimed, is hereby required to submit a report on Form TFR-611 concerning such property, containing the following information:

(1) The name of the person for whom or for whose benefit the property is being held;

(2) The nature of the interest of the designated country or national thereof in the property so held;

(3) The original amount and type of such property in each case;

(4) The location and other identifying information, including account numbers, of such account;

(5) The rate of interest being paid thereon at the time of the report, the date from which interest was credited, and the rates of interest during different periods if changes were made prior to the report;

(6) The current balance in the account;

(7) The exemption claimed under § 520.05, if any, and,

(8) The date of any previous report concerning the property filed with the Treasury Department or the Office of Alien Property, Department of Justice.

(b) Reports required by paragraph (a) of this section shall be prepared in duplicate. Within 90 days of the date that notice of the availability of Form TFR-611 is published, both copies shall be sent in a set to Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220. Form TFR-611, with reporting instructions, can be obtained from the Office of Foreign Assets Control or from the Federal Reserve Bank of New York, 33 Liberty Street, New York, New York 10045.

(c) Reports filed in accordance with this section are regarded as containing commercial and financial information that is privileged and/or confidential.

(Sec. 5, 40 Stat. 415, as amended; 50 U.S.C. App. 5; E.O. 8389, Apr. 10, 1940, 5 FR 1400, as amended by E.O. 8785, June 14, 1941, 6 FR 2897, E.O. 8832, July 26, 1941, 6 FR 3715, E.O. 8963, Dec. 9, 1941, 6 FR 6348, E.O. 8998, Dec. 26, 1941, 6 FR 6785, E.O. 9193, July 6, 1942, 7 FR 5205; 3 CFR, 1943 Cum. Supp.; E.O. 10348, Apr. 26, 1952, 17 FR 3769, 3 CFR, 1949-1953 Comp., p. 871; E.O. 11281, May 13, 1966, 31 FR 7215, 3 CFR 1966 Supp.)

Dated: February 15, 1979.

STANLEY L. SOMMERFIELD,
Acting Director.

Approved:

RICHARD J. DAVIS,
Assistant Secretary.

[FR Doc. 79-6242 Filed 3-1-79; 8:45 am]

[3810-70-M]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

[DoD Directive 1225.5] [1]

PART 246—GUARD/RESERVE FORCES FACILITIES PROJECTS

Policy on the Acquisition of Facilities

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule regarding Guard/Reserve Forces Facilities Projects is reissued to state present policy; revise levels of project approval authority; delete some reporting requirements; add to or otherwise change existing requirements. The revisions serve to bring this rule up-to-date.

EFFECTIVE DATE: January 23, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert J. Lanoue, Office of the Deputy Assistant Secretary of Defense (Installation and Housing), OASD (MRA&L), Washington, D.C. 20301, Telephone 202-695-5296.

SUPPLEMENTARY INFORMATION: In FR Doc 67-12528, October 24, 1967, appearing in the FEDERAL REGISTER on October 25, 1967 (32 FR 1450), the Department of Defense published Part 246 which established the rule regarding the Reserve Forces Projects. Since substantive changes have been made, Part 246 is being republished entirely.

Accordingly, 32 CFR Chapter I, Part 246, is revised, reading as follows:

Sec.

AUTHORITY: This rule is issued under Title 10, U.S.C., section 2202.

§ 246.1 Reissuance and purpose.

This Part is being reissued to publish current policy on the acquisition of facilities for the Guard and Reserve components of the Armed Forces, including minor construction and repair of facilities. Substantive changes include (a) adjustments in the levels of project approval authority; (b) the deletion of certain reporting requirements; (c) the addition of new requirements concerning the submission of justification data in support of projects; (d) a modification of the definition of minor construction projects; (e) a requirement for a site survey for all projects that involve land acquisition; and (f) delegation of approval authority for repair projects to the Secretaries of the Military Departments.

§ 246.2 Applicability.

The provisions of this Directive apply to the Military Departments. The term "Military Services" refers to the Army, Navy, the Air Force and the Marine Corps.

§ 246.3 Policies and procedures.

(a) *General.* (1) Facilities will be provided that will make the greatest contribution to readiness and that are es-

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120 Attention: Code 301.

sential for the proper development, training, operation, support (including troop housing and messing) and maintenance of the Guard and Reserve components, who must meet approved operational readiness and mobilization requirements for (i) units in the Guard and Reserve forces and (ii) individual reservists with specific mobilization assignments.

(2) Each proposed construction project in excess of $100,000 that involves the use of authority contained in 10 U.S.C. 133 shall be submitted to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (ASD(MRA&L)) or a designee for approval and notification of the Congress, as required by 10 U.S.C. 2233a(1). No obligation of construction funds shall be made until after the expiration of 30 calendar days from the date that the Congress has been notified for project approval. If no Congressional objections have been received after 30 calendar days, the Military Departments automatically have the authority to obligate construction funds subject to the reprograming procedures noted in § 246.3(b)(1).

(i) Projects will not be forwarded for the 30-day Congressional notification period unless they are in the final stages of design and the final cost estimate, prior to contract award, has been determined. The Military Departments will note any deviation from this policy in their covering memorandum, with full justificaton for an early processing of the notification.

(ii) A project may be programed when the total actual strength of the assigned units at the installation is 50 percent of the total authorized strengths of the proposed facility. Congressional notification for all projects will not normally be initiated until the total actual on-board strength is a minimum of 75 percent of the total authorized strength of the proposed facility. Further, for all projects where the total actual strength is 85 percent or less than the total authorized, a statement will be included in the notification request relating the requirement to current and projected personnel strengths. If the requested project is required to support understrengthed units and is not directly dependent upon on-board personnel strengths such as a maintenance shop, a statement will be included with the justification documents indicating that the requirement is based upon factors other than personnel strength plus any other pertinent information which will justify conclusively the requirement.

(iii) For omnibus projects; e.g., energy conservation investment program, pollution abatement program, etc., a list of individual projects will accompany and support the construction request at the time of Congressional notification prior to contract award. It is expected that the projects as indicated will be constructed as part of the omnibus project. No deviation is authorized unless prior approval is received from the ASD(MRA&L) or a designee.

(iv) Each project costing $100,000 or less will be accomplished under the minor construction appropriation in lieu of lump sum military construction authorization. Construction projects costing $50,000 or less may be financed from appropriations available for maintenance and operations of installations or the minor construction appropriation.

(v) No project shall be incremented in order to circumvent any limitations.

(vi) Any subsequent increase in the estimated cost that exceeds 125 percent of the project cost as initially approved shall be submitted, with justification, to the original approval authority for appropriate adjustment and, for projects which ultimately exceed $100,000, notification of the Armed Services Committees by the ASD(MRA&L) or a designee. At the conclusion of 14 calendar days from the date of initiation of notification the Military Departments shall assume that the project has been approved at the increased cost unless notified to the contrary by the ASD(MRA&L) or a designee. For projects that exceed $400,000 established reprograming procedures and prior approval must be obtained before funds can be obligated. All such increases must be accommodated within the military construction program authorization. Projects shall be reflected in reports required by § 246.5.

(vii) For those projects whose ultimate costs do not exceed $100,000, the Secretary of the Military Department concerned or a designee shall approve all cost increases. This authority may be redelegated by the Secretary.

(viii) The approval of any increase in estimated cost shall not constitute authority to increase the scope of the project as originally approved.

(ix) The criteria for the determination of "total project cost" are prescribed in DoD Directive 7040.2,[1] "Program for Improvement in Financial Management in the Area of Appropriations for Acquisition and Construction of Military Real Property," January 18, 1961.

(b) *Programing of Guard and Reserve Forces Facilities.* (1) *Programs.* Annual and updated long-range programs for each Guard and Reserve component shall be submitted each year to the ASD(MRA&L) by each Military Department. Programs shall be submitted no later than October 1 (or earlier, as called for) in order to be in accord with annual legislative and budgetary schedules. In turn, prior to the Congressional hearings on the Guard and Reserve Forces Military Construction Authorization and Appropriation Bill, the Office of the ASD(MRA&L) will prepare a listing of projects alphabetically by State based on the annual Service submissions and furnish them to the Armed Services Committees and to each of the Military Departments. When it becomes necessary to delete, postpone or add projects to the respective lists, established reprograming procedures and prior approval must be obtained before funds for the projects can be obligated.

Requirements. As a basis for the annual reexamination of the total requirements for training facilities, the total of the authorized strengths (§ 246.7(c)) for all units and/or locations of each Guard/Reserve Component may not exceed 110 percent of the total of Selected Reserves who use the facility. The added 10 percent is intended to provide a reasonable degree of flexibility in the overall planning of the utilization of these facilities. It is not intended to be used for the express purpose of either increasing the allowable size of a specific facility or creating a requirement for the purchase or construction of a facility at an otherwise ineligible location.

(3) *Method of Acquisition of Guard and Reserve Forces Facilities.* In fulfilling facilities requirements, the following methods shall be considered in the sequence listed and shall be used by the State Guard/Reserve Forces Facilities Boards in accordance with DoD Directive 5126.24,[1] "Duties and Responsibilities of State Guard/Reserve Forces Facilities Boards," August 1, 1973. The acquisition of new facilities and the expansion, repair, or replacement of existing facilities shall be determined by the most cost-effective method. When appropriate, economic analyses and program evaluations of Guard/Reserve Forces facilities requirements shall be made in accordance with DoD Instruction 7041.3,[1] "Economic Analysis and Program Evaluation for Resource Management," October 18, 1972, and shall be included as part of the resource justification:

(i) Full utilization of existing, partially used facilities, including those of the other Guard/Reserve components and the active Armed Forces in accordance with DoD Directive 4165.6,[1] "Real Property Acquisition, Management and Disposal," December 22, 1976.

(ii) Utilization of real property that is excess to the needs of any of the Military Departments or other Feder-

[1] Copies may be obtained if needed from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120. Attention Code 301.

al agencies; by transfer, use agreement, or permit.

(iii) Lease or donation of privately or publicly owned property that can fulfill the need, or be modified at reasonable cost to meet the requirement.

(iv) Construction of additions to existing facilities for the Guard/Reserve components or Active Forces, or on property already controlled by them, with provision for maximum joint or common use of existing space and facilities.

(v) Purchase of existing real property suitable for the purpose without uneconomical remodeling or renovation.

(vi) Construction of a new facility by two or more Guard/Reserve components as a joint venture. If such construction at a single location cannot be accomplished concurrently, because of an unreconcilable disparity in priorities or for other cogent reasons, provision will be made in the design and siting of the initial structure for future expansion.

(vii) Unilateral construction of a new facility by a single Guard/Reserve component only when all of the other methods have been carefully reviewed and found impractical or uneconomical by a State Guard/Reserve Forces Facilities Board.

(4) *Joint facilities.* (i) The Military Departments shall accomplish joint acquisition and/or joint use of facilities to the fullest extent and, for each proposed facility that is not proposed for joint acquisition and/or joint use, furnish factual justification to support their conslusion that joint facilities are not practicable.

(ii) Military Department programs will be coordinated at the departmental level to determine the joint acquisition/use aspects prior to submission to the ASD(MRA&L).

(iii) As a general principle, the host Service (the Military Service having the majority interest in the facility) shall program all costs for acquisition to meet its own minumim requirements.

(iv) The tenant Service (the Military Service having a minority interest in the facility) shall program all costs for acquisition, as well as any additional utilities and mechanical service, that are excess to the host Service requirements.

(v) Within the provisions of DoD Directive 5100.10,[1] "Delegation of Authority With Respect to Reserve Forces Facilities," March 16, 1972, the ASD(MRA&L) or a designee may require those adjustments in project priorities and scope, host/tenant relationships, and the sharing of project costs that is considered to be essential for the fullest use of the facilities.

(vi) At a multi-use activity (i.e., an installation where more than one Guard or Reserve component is located, or where the Guard and Reserves are collocated with an Active Component), unilateral construction will not be authorized for any project in the category codes of 400 (Supply Facilities), 500 (Hospital and Medical), and 700 (Housing and Community Facilities) unless supporting documentation clearly indicates that joint utilization or modification of any existing structure is impractical or uneconomical. For any project within these category codes (DoD Instruction 4165.3,[1] "Department of Defense Facility Classes and Construction Categories," September 1, 1972), supporting documentation will indicate whether or not there is a similar facility at the installations.

(c) *Planning procedues.* (1) Armory and nonarmory projects will be consolidated at a single location whenever possible.

(2) Facilities required for equal or principal use of the Active Forces will be programed by the Active Forces. The ASD(MRA&L) or a designee may grant exceptions to this general policy on a specific case basis for those installations where a Guard/Reserve component has been designated as the host Service.

(3) Facilities required for sole or principal use of the Guard/Reserve components will be programed by the Guard/Reserve components.

(4) When the ASD(MRA&L) or a designee determines that the expansion, rehabilitation, or conversion of existing armory facilities is necessary, due to the Federally-directed conversion, redesignation, or reorganization of U.S. Army or Air National Guard units, the Federal contributions to the States, Puerto Rico, Guam, Virgin Islands, and the District of Columbia may be at 100 percent of the cost involved (10 U.S.C. 2233(a)(3).

(5) The size of each facility to be constructed shall be based upon current authorized strength in units and/or individuals, together with the quantity and type of equipment and supplies required for proper training at the facility, and in consonance with space and facilities criteria approved or established by the ASD(MRA&L) or a designee (DoD Manual 4270.1-M, "Construction Criteria," June 1, 1978 (Advance Edition)). Facilities for Guard/Reserve component use that are acquired by other means than construction shall adhere to the same criteria as closely as possible, consistent with the physical characteristics of existing structures.

(6) When it becomes necessary for the active military forces to displace or relocate permanently housed units or activities of the Guard/Reserve components that are not mobilized, the regular military forces shall provide replacement facilities equal to those from which the units or activities are removed. In such instances, the Chief of the Guard/Reserve components or other tenant unit(s) concerned must be consulted, their relocation requirements considered, and suitable alternatives developed prior to displacement or relocation action. The replacement facilities must (i) be acceptable to the Chief of the Guard/Reserve component of the unit being displaced, and (ii) meet approved space requirements, including storage, so as not to impede the execution of training programs. The term "acceptable" applies to the timely availability of the replacement facilities to ensure they meet the occupying units' routine readiness and training requirements. In the event new construction or major repair is required as a direct result of the dislocation/relocation, Guard/Reserve construction funds will not be authorized for project accomplishment. The foregoing provisions shall not apply when a tenant unit is displaced or relocated after using space on a temporary or interim basis pending the acquisition of exclusive or sole-use space.

(7) During the process of excessing land or facilities that were constructed under a Guard/Reserve military construction authorization program and that are no longer required by the Guard/Reserve component, other Guard/Reserve components will be screened to determine their needs for such resources before notifying the active Services of their availability. Army National Guard facilities constructed on State land will not be reported to the active services for availability.

(8) For each annual program, the Military Construction Program Books will address succinctly the relationship of the facilities requested to the achievement of operational readiness for each component of the Guard and Reserve forces.

(9) All annual authorization program books submitted for OSD budget review and subsequent Congressional submission will contain the information shown in § 246.8 as part of the preface of the book, with any exceptions noted on the individual project DD 1391 or DD 1391c justification document. This information will be forwarded over the signature of the official having final departmental authority for approving Guard/Reserve facilities construction projects.

(10) For all projects involving land acquisition, a site survey must be conducted prior to commencement of design. The survey will include necessary subsurface explorations and will be sufficiently thorough to make reasonably certain the site and soil conditions are such that the facility can be

designed using normal engineering practices, and can be constructed within programed funds. The results of the survey will be documented in a site survey report, which will be utilized as a major consideration in the site selection process. It is not necessary to submit this report to ASD(MRA&L), but a survey and report will be made for all projects involving site acquisition and will be available upon request.

(11) Land acquisition under the Guard and Reserve title of the Annual Military Construction Authorization Act must be reported to the Congress pursuant to 10 U.S.C. 2662 if the value of the fee exceeds $50,000. Prior approval of such acquisition by the ASD(MRA&L) or a designee is required by DoD Instruction 4165.12,[1] "Prior Approval of Real Property Actions," July 23, 1973.

(d) *Armory Projects.* (1) Armories shall be fully utilized consistent with preservation of unit integrity. Training at multiple-unit locations should be spread over a period of 4 nights per week, or 4 weekends per month, where local conditions and efficient administration of the training program make this practicable and economical.

(2) In planning its Guard and Reserve program, each Military Department shall establish an authorized strength for each existing and/or programed facility. These facilities requirements at any location will be based upon the authorized strength as specifed in DoD Manual 4270.1-M.

(3) Armories will not be acquired by purchase nor will Congressional notification be initiated for armory construction at Federal expense at any location where Guard/Reserve Component has an *actual* strength of less than 55, or where there is a combined (joint) *actual* strength of less than 100. Requirements for units of lesser strength will be justified on an individual basis under the provisions § 246.6.

(e) *Nonarmory Projects.* Administrative and logistics support facilities will be consolidated with training support facilities whenever possible.

(f) *Design and Types of Construction.* (1) Proposed definitive drawings, specifications, space criteria, and construction standards shall be devised and submitted for the approval of the ASD(MRA&L) or a designee prior to their acceptance as criteria and standards. After approval, they shall be used to the maximum extent. Similarly, exceptions to approved criteria and construction standards shall be submitted for prior approval.

(2) New facilities for the Guard/Reserve components will be designed in accordance with DoD Manual 4270.1-M. In the design of new facilities, maximum use will be made of energy conservation techniques to conserve critical fuels and energy resources.

(3) For each project proposed to replace an existing facility, whether the project is initially submitted as part of an annual authorization/budget program, or, subsequently, within available funded lump sum authorization, the supporting justification data shall include:

(i) A full description of the existing facility, including (A) date constructed, (B) type of construction, (C) physical condition of the essential elements of the facility, and (D) ultimate disposition of the structure. Project sponsors are encouraged to include photographs that illustrate the conditions described.

(ii) Approximate expenditures for improvements or additions to the facility during the 2-year period preceding current submission of the project, and for day-to-day maintenance and repairs during the same period.

(iii) An economic analysis must be available, clearly depicting the value of replacing rather than repairing, existing facilities. For those replacement projects where it would be a waste of resources to consider obviously impractical alterations, the formal economic analysis is not required; but the requested project must reflect an explicit foregone conclusion.

(g) *Site Plans or Master Plans.* For all projects other than single facilities at a location, such as armories and centers, one copy of the site plan or master plan of the installation, clearly depicting the proposed project(s) in relation to existing and projected facilities, shall be submitted with the initial proposal. Where Guard/Reserve components of more than one Military Service are located at an installation, each requested project will be sited in accordance with an approved interservice master plan that indicates maximum joint use of all facilities.

§ 246.4 Minor construction, repair, and restoration-of-damage projects.

(a) *Minor Construction.* (1) The term "minor construction" shall be applied to all Guard/Reserve Forces construction projects that do not exceed $100,000 in cost (except those included in omnibus projects, such as pollution abatement and the energy conservation investment program). Such projects are to be accomplished using available funds specifically identified as minor construction in the approved annual budgets for Military Construction, Guard and Reserve Forces or using appropriations available for Maintenance and Operations, as described in § 246.4(a)(2). Previously approved minor construction projects become invalid as such when the estimated cost exceeds $100,000 and must be resubmitted for approval as military construction projects, using available lump sum authorization. Essential projects not exceeding $50,000 in cost may be accomplished from funds available for Maintenance and Operations of installations under the provisions of 10 U.S.C. 2233a(2) or from the minor construction appropriation. Projects within these categories must not exceed applicable established criteria or consist of repetitive types of facilities for which the criteria as provided in § 246.3(f) have not been established. The justification of minor construction projects submitted to the Secretary of a Military Department or a designee, shall provide the same technical information and cost data required for major construction projects, together with the required affirmation of the nonavailability of existing facilities capable of fulfilling the requirements. For each project that is $25,000 or less, the Secretary of the Military Department concerned or a designee may establish appropriate justification data. The Secretary of a Military Department of a designee shall approve all minor construction projects.

(b) *Restoration-of-Damage Projects.* Restoration-of-damage projects are special types of repair or reconstruction projects resulting from sudden unexpected major damage. Due to the urgency of the requirement, execution must be accomplished in the most expeditious manner. Accordingly, restoration-of-damage projects may be funded with Operations and Maintenance, Major or Minor Construction funds. Approval authority will be in accordance with that required for normal repair or construction projects funded under the selected fund source. The justification for restoration-of-damage projects shall include statements that:

(1) The projects are, in fact, restorations or replacements of facilities that have been damaged.

(2) The scope is the minimum to satisfy current and projected missions.

(3) The quality of construction proposed is comparable with that originally damaged or destroyed; allowing, however, for improved materials and equipment, to conform with current design practice and to minimize the possibility of future damage.

(4) The quantitative and qualitative criteria is in accordance with § 246.3(f).

(c) *Approved Facilities.* (1) Subject to the financial limitation otherwise prescribed, projects listed under § 246.4(a) and (b) that do not require prior approval by the ASD(MRA&L) are considered to become "approved facilities," within the purview of III. C., DoD Directive 5100.10,[1] at the time the projects are authorized by the Sec-

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120. Attention Code 301.

retary of the Military Department concerned or a designee, provided each project authorization includes a determination that the project does not involve a change in the number of units or reduce the joint-utilization potential of a facility in contravention of 10 U.S.C. 2234.

(2) Any project for which this determination cannot be made at the Military Department level shall be submitted to the ASD(MRA&L) or a designee.

(d) *Repair Projects.* (1) *General.* Projects for the repair of facilities, as defined in DoD Directive 7040.2 [1] normally shall be accomplished with funds appropriated for Operations and Maintenance. The requests for project approval shall be submitted in accordance with policies and procedures established by the Secretary of the Military Department concerned with sufficient justification provided. The justification shall include similar technical and cost data to validate the requirement as is required for major construction projects.

(2) *Approval Authority.* The Secretary of the Military Department concerned or a designee shall approve, in advance of the undertaking, those repair projects exceeding $400,000 and those repair projects in which the repair cost is in excess of $75,000 and is 50 percent or higher of the replacement cost of the facility. This authority may not be redelegated; however, the Secretary may redelegate approval authority for all other repair projects.

§ 246.5 Reporting.

(a) A semiannual status report is required for each Guard/Reserve component facilities program.

(b) The semiannual status report of projects approved for funding within the lump sum authorization provided by the annual Guard/Reserve Forces Facilities Authorization Acts (FY 1963 forward) shall be prepared on DD Form 1405 (enclosure 1) and covered by a summary on format A (enclosure 2), in accordance with the accompanying instructions. Projects are to be cited in the report from the time of approval until financially complete. Three copies of each report shall be submitted to the ASD(MRA&L) or a designee no later than 60 days after the close of the second and fourth quarters covered by the report. This report does not constitute the request for approval of an increase exceeding 25 percent in the approved project costs, as required by § 246.3(a)(2)(vi).

(c) When approved, a copy of each repair project in excess of $400,000 or $75,000 and 50 percent or greater of the replacement cost, with supporting project justification, shall be furnished to the ASD(MRA&L).

§ 246.6 Exceptions.

The ASD(MRA&L) or a designee may grant exceptions to the provisions of this Part —— when the Military Departments conclusively demonstrate the exceptions to be essential.

§ 246.7 Definitions.

(a) *Facility.* Includes any (*i*) interest in the land or real property, (*ii*) armory or other structure, and (*iii*) storage or other facility normally needed for the administration and training of any unit of the Guard and Reserve components of the Armed Forces.

(1) *Armory.* A primary structure that houses one or more units of a Guard/Reserve component and is used for unit training and administration; includes any appurtenant structure housing equipment used for the unit's training and administration. For the purpose of this Directive, the term is restricted to a facility designed for home station training. The Military Departments may use their customary terminology; e.g., National Guard Armory, Army Reserve Center, Naval and/or Marine Corps Reserve Center, etc. When occupied by Guard/Reserve components of more than one Military Department a facility shall be known as an "Armed Forces Reserve Center."

(2) *Nonarmory Facility.* (i) *Administrative and Logistics Support Facility.* A field maintenance shop, warehouse, office, and other such structures.

(ii) *Training Support Facility.* Training sites, ranges, and other related facilities.

(b) *Reserve Structure.* As authorized by the Secretary of Defense, the organization of a Guard/Reserve component with a manning level of participating personnel in paid status, planned to meet mobilization requirements and approved by the Secretary of the Military Department concerned.

(c) *Authorized Strength.* The planned manning level, approved by the Secretary of the Military Department concerned, of personnel in the Selected Reserve, as defined in DoD Directive 1215.6 (32 CFR 102).

(d) *Program.* A plan for the acquisition of additional facilities and/or replacement of existing facilities by purchase, transfer, and construction, and for their expansion, rehabilitation, conversion, and equipping.

(1) *Long-Range Program.* A program that: is correlated and in consonance with the latest approved update of the Five-Year Defense Program, DoD Instruction 7045.7,[1] "The Planning, Programming, and Budgeting System," October 29, 1969; is composed of projects by location, type and size of facility, and estimated cost; and indicates all foreseeable requirements for which it is contemplated that authorization will be requested in the annual program of each of the five succeeding fiscal years. The projects are listed alphabetically by State and location preceded by a summary page showing the numbers of projects and the aggregate estimated costs for each year of the 5-year program period, plus the residual no-year increment.

(2) *Annual Program.* A single fiscal year increment of the long-range program, supported by justification data as specified on DD Forms 1390S, 1391 and 1391c, and by the certifications shown at enclosure 5 and those required by DoD Directive 1200.1 (32 CFR 67).

(e) *Approved Project.* A project funded from the lump sum authorization is considered to be approved if the Congress does not disapprove it within 30 days after notification by the ASD(MRA&L) or a designee of intent to construct it.

(f) *Land Acquisition.* Land required for any construction project that is acquired through fee, lease, donation, exchange, permit or license.

[8010-01-C]

Enclosure 1

DEPARTMENT OF DEFENSE RESERVE FORCES FACILITIES STATUS REPORT OF MAJOR CONSTRUCTION PROGRAM				RESERVE COMPONENT		FOR THE FISCAL YEAR			REPORT CONTROL SYMBOL
				CONTRACT AWARD DATE		COMPLETION DATE			
INSTALLATION AND LOCATION	PROJECT DESCRIPTION	DATE APPROVED	COST AUTHORIZED	SCHED	ACTUAL	SCHED	ACTUAL	COST AT COMPLETION OR C W E.	REMARKS
a	b	c	d	e	f	g	h	i	j

DD FORM 1 JUL 67 1405 REPLACES EDITION OF 1 NOV 62, WHICH IS OBSOLETE. PAGE ____ OF ____ PAGES

INSTRUCTIONS

GENERAL - All projects approved by the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics), for which Congressional notification has been completed, as well as projects approved by other competent authority within lump sum authorizations contained in annual Guard and Reserve Forces Facilities Authorization Acts, shall be included in this report, from the quarter in which they are approved to the quarter in which they are reported as financially completed. For approved projects canceled or withdrawn from the program during a reporting period, complete entries in columns a, b, c and d and enter appropriate notations under "Remarks", column j. Entries shall be arranged alphabetically by States and by location, in accordance with the following guidance:

COLUMN a - Enter name of State, and, under it, identify facility and location, e.g., NG Armory Beloit, NAS Willow Grove, Springfield MAP. Initials and abbreviations commonly applied in the specific program area may be used. For items authorized under a "Various Locations" heading in the Major Construction Program, enter data in appropriate alphabetical geographic location and place note under "Remarks," column j: "Var. Locs. Item."

COLUMN b - Enter brief description of project or facility items as shown in item 7, column b of DD Form 1390S, "FY 19____ Guard and Reserve Military Construction Program." For a location having more than one item, list in chronological order of approval dates entered in column c of this form.

COLUMN c - Enter date project was approved by authority responsible for final approval, plus an asterisk if approval was by other than the Congress. Usually this will be 30 days after initiation of Congressional notification.

COLUMN d - Enter estimated cost of project or facility item as approved. If an increase in estimated cost exceeding 25% was approved after the initial project approval, enter a note under "Remarks," column j: "Auth. Cost Increase to $____ approved ____(date)____."

COLUMNS e, f, g, h - Self-explanatory; show dates only by month and year (e.g., 10/67).

COLUMN i - Enter cost, to nearest dollar, at time of financial completion (exclude architect-engineer design costs), or current working estimate (CWE) if not yet financially completed.

COLUMN j - Enter any appropriate notation needed to explain or clarify an entry under another column, to indicate the true status of the project. Particularly, where beneficial occupancy of a facility was attained during a reporting period but the item is not reportable as financially completed, enter "BOD (month and year)." If project is being reported 100% completed, enter note "Financially Complete."

Enclosure 2

RESERVE COMPONENT _____ REPORT CONTROL SYMBOL DD-M(SA)802

DEPARTMENT OF DEFENSE GUARD/RESERVE FORCES FACILITIES

SUMMARY OF AUTHORIZATION STATUS
OF MAJOR CONSTRUCTION PROGRAM REPORTED ON ATTACHED DD FORM 1405
FOR THE PERIOD _____

(a) Cumulative total of lump sum authorization from P.L. 87-554 to P.L. _____ inclusive - $

(b) Total reported financially completed this period (cost at completion)---------- $

(c) Cumulative total reported completed end of last period---------- $_____

(d) New cumulative total completed end of this period (b) + (c)---------- $

(e) Total of approved but uncompleted projects end of this period (C.W.E.)---------- $

(f) Total of cumulative lump sum authorization committed to projects (d) + (e)---------- $_____

(g) Balance of cumulative authorization uncommitted (a) - (f)---------- $

INSTRUCTIONS

GENERAL: The DD Form 1405 is designed to provide a semiannual record of status of Guard/Reserve facilities projects accomplished within the lump sum authorizations provided annually for this program in the Military Construction Authorization Acts. This "Format A" is designed to provide for record purposes a summary of the committed amounts of such authorization, reported by project on the DD Form 1405, and the remaining uncommitted amount for use in connection with submission of the project notifications to the Congress as required by 10 U.S.C. 2233a(1). It is imperative, therefore, that this reporting be both complete and accurate.

SPECIFIC: Lines (a) through (g) are self-explanatory and shall reflect all approved projects chargeable to the lump sum authorizations provided by the annual Military Construction Authorization Acts beginning with Title VII of Public Law 87-554.

ENCLOSURE 3

PREFACE TO MILITARY CONSTRUCTION PROGRAM BOOKS (GUARD/RESERVE COMPONENT) FISCAL YEAR MILITARY CONSTRUCTION PROGRAM

A. *Environmental Protection, P. L. 91-190:* All projects in the (Guard/Reserve Component) FY —— Military Construction Program have been addressed for potential significant environmental impact in accordance with section 102(2)(c) of the National Environmental Policy Act; and it has been determined that the proposed projects will not have a significant impact on the environment nor are they highly controversial, except ——. (see DoD Directive 6050.1,[1] "Environmental Considerations in DoD Actions," March 19, 1974 for guidance on the preparation of Environmental Impact Statements).

B. *Floodplains and Wetlands:* Projects have been evaluated for conformance with Executive Orders 11988 and 11990 and none are sited in floodplains or wetlands except —— (for any projects sited in floodplains or wetlands the circumstances will be fully explained in accordance with paragraph 4-10 of DoD Manual 4270.1-M and full compliance with the provisions of that paragraph will be indicated on the individual project Form DD 1391).

C. *Consideration of Alternative Facilities:* All existing facilities have been considered for potential use to fill these requirements and no suitable space is available.

D. *National Historic Preservation Act of 1966:* Real estate on which facilities are to be constructed do not appear in the National Register of Historic Places except ——.

E. *Reserve Manpower Potential:* The reserve manpower potential to meet and maintain authorized strengths of all Guard/Reserve flying/nonflying units in the areas in which these facilities are to be located has been reviewed in accordance with the procedures described in subsection IV.A. of DoD Directive 1200.1 (32 CFR 67). In coordination with the other Military Services, it has been determined that the number of Guard/Reserve flying/nonflying units presently located in these areas and allocated for future activation is not and will not be larger than can be maintained at authorized strength, by all reasonable expectations. This determination is based on the number of persons living in the areas who are qualified for membership in those Guard/Reserve units.

F. *Fallout Protection:* In accordance with Section 610 of Public Law 89-568, as amended, and DoD Directive 3020.35,[1] "Development, Use, Marketing and Stocking of Fallout Shelters," July 31, 1972, military construction facilities in this program have been designed to afford maximum fallout protection. Fallout shelters have been excluded only for the following reasons: (See DoD Directive 5100.50,[1] "Protection and Enhancement of Environmental Quality," May 24, 1973, for applicable exceptions).

G. *Pollution Abatement:* The design of proposed military construction projects includes, where appropriate, the provision of facilities for air and water pollution control in accordance with Executive Order No. 11752 and DoD Directive 5100.50.[1] Military construction projects proposed primarily for abatement of existing pollution problems at (Guard/Reserve component) installations have been reviewed for air and water pollution abatement by the Environmental Protection Agency. Each project is designed to correct an existing pollution problem in accordance with specific requirements.

H. *Design for Accessibility of Physically Handicapped Personnel:* In accordance with Public Law 90-480, provisions for physically handicapped personnel will be provided for, where appropriate, in the design of facilities included in this program. (See Paragraph 5-6, DoD Manual 4270.1-M for requirements for accessibility and for information required on individual project Form DD 1391.)

I. *Vending Facilities for the Blind:* Projects have been evaluated for the provision of vending facilities to be operated by blind persons in compliance with DoD Directive 1125.3 (32 CFR 260) and satisfactory sites for the operation of vending facilities will be provided where required by that

J. *Energy Conservation:* Any proposed projects specifically for energy conservation at (Guard/Reserve component) installations have been developed, reviewed, and selected for early economic payoff and maximum reduction of energy consumption. Projects include improvement to existing facilities and utilities systems to upgrade design, eliminate waste, and install energy-saving devices. Criteria for all new facility construction in the (Guard/Reserve Component) Military Construction Program requires that the design, materials, and operational facilities provide for maximum reduction of energy consumption.

---

[1] (Signature of Guard/Reserve official having final responsibility for approving construction projects.)

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

FEBRUARY 27, 1979.

[FR Doc. 79-6309 Filed 3-1-79; 8:45 am]

[3710-08-M]

CHAPTER V—DEPARTMENT OF THE ARMY

[Regulations for the U.S. Military Academy]

PART 575—ADMISSION FOR THE U.S. MILITARY ACADEMY

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army revised 32 CFR Part 575 to update the information in the CFR and has rewritten the text to substantially reduce the length as well as to make it easier to read and understand.

EFFECTIVE DATE: February 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Major K. C. Kessler, Area Code 703-695-2663 or write to: HQDA (DAPE-MPO-R/MAJ K. C. Kessler), WASH, DC 20310.

By authority of the Secretary of the Army.

Dated: February 22, 1979.

ROME D. SMYTH,
Colonel, U.S. Army, Director, Administrative Management, TAGCEN.

Accordingly, 32 CFR is amended by revising Part 575 to read as follows:

PART 575—ADMISSION TO THE UNITED STATES MILITARY ACADEMY

Sec.

AUTHORITY: The provisions of this part 575 issued under sec. 3012, 4331, 70A Stat. 157, 238; 10 U.S.C. 3012, 4331-4355.

§ 575.1 Military Academy.

(a) *Organization and administration.* (1) The United States Military Academy is under the general direction and supervision of the Department of the Army. The Secretary of the Army has designated the Chief of Staff of the Army as the officer in direct charge of all matters pertaining to West Point.

(2) The immediate government and military command of the Academy and the military post at West Point are vested in the Superintendent. In the absence of the Superintendent, the Deputy Superintendent, if present for duty, shall have such government and command. The Dean of the Academic Board has charge of the faculty and all academic work, and acts as representative of the academic departments and as adviser on academic matters to the Superintendent. The Commandant of Cadets is in charge of the administration and training of the Corps of Cadets and is also head of the Department of Tactics.

(b) *Mission.* The mission of the United States Military Academy is to educate, train, and motivate the Corps of Cadets so that each graduate shall have the character, leadership, and other attributes essential to progressive and continuing development throughout a career of exemplary service to the Nation as an officer of the Regular Army.

(c) *Courses of instruction.* Courses include academic education and military training. In accomplishing its mission, the Military Academy strives to develop in each cadet the following traits:

(1) The knowledge, skill, intellectual curiosity, discipline, and motivation provided by a sound education in the arts and sciences requisite for continued professional and intellectual growth.

(2) A highly developed sense of personal honor and professional ethics.

(3) Professional and personal commitment to the responsibilities of an officer for soldiers.

(4) Selflessness.

(5) The willing acceptance of responsibility for personal actions and the actions of subordinates.

(6) The initiative and good judgment to take appropriate action in the absence of instructions or supervision.

(7) Physical and moral courage.

(8) The physical strength, endurance, and conditioning habits required of a soldier.

§ 575.2 Admission; general.

(a) In one major respect, the requirements for admission to the United States Military Academy differ from the normal requirements for admission to a civilian college or university; each candidate must obtain an official nomination to the Academy. The young person interested in going to West Point should, therefore, apply for a nomination from one of the persons authorized to make nominations listed in § 575.4. In the application, each prospective candidate should request a nomination to the United States Military Academy, and give residence, reasons for wanting to enter the Academy, and status of education and training.

(b) A candidate's mental qualifications for admission are determined by performance on one of the regularly administered College Entrance Examination Board series of tests. The Military Academy will consider scores made on the tests which are offered in December, January, March, and May at more than 700 College Board Test Centers throughout the United States and abroad. In general, a center will be within 75 miles of the candidate's home. Candidates register for the prescribed tests in accordance with the regularly published instructions of the College Board and pay the required fee directly to the College Board.

(c) The candidate's physical qualifications are determined by a thorough medical examination and physical aptitude test. To qualify, a candidate must be in good health, have good vision and hearing, have no deformities, and have the physical strength, endurance, coordination, and agility of active persons in their late teens. The medical examination and physical aptitude tests are held at selected military installations throughout the country (and overseas) on the Thursday and Friday preceding the regularly scheduled March administration of the College Board tests.

§ 575.3 Appointments; sources of nominations.

Admission to the Military Academy is gained by appointment to one of the cadetships authorized by law. Graduation of the senior class normally leaves about 915 vacancies each year. Candidates are nominated to qualify for these vacancies the year prior to admission. Those nominees appointed enter the Academy the following July and upon graduation are obligated to serve in the Army for a period of not less than 5 years. There are two major categories of nomination (Congressional/Gubernatorial and Service-Connected) and two minor categories (Filipino and Foreign Cadets). Cadetships authorized at the Military Academy are allocated among various sources of nominations from the major categories as follows:

Congressional/Gubernatorial	Cadets at the Academy at any one time
Vice President	5
100 Senators (5 each)	500
435 Representatives (5 each)	2,175
Delegates in Congress from:	
District of Columbia	5
Virgin Islands	1
Guam	1
Governor/Residential Commissioner of Puerto Rico	6
Governors of:	
Canal Zone	1
American Samoa	1

Service-Connected	Annually Allocated Cadetships
Presidential	100
Enlisted Members of the Regular Army	85
Enlisted Members of the Army Reserve/National Guard	85
Sons and Daughters of Deceased and Disabled Veterans (approximately)	10

Service-Connected	Annually Allocated Cadetships
Honor Military, Naval Schools and ROTC	20
Sons and Daughters of persons Awarded the Medal of Honor	Unlimited

(a) *Congressional / Gubernatorial Nomination.* (1) Up to 10 nominations may be submitted for each vacancy. Nominating authorities may use one of three methods of nomination:

(i) Name 10 nominees on a totally competitive basis,

(ii) Name a principal nominee, with nine competing alternates, or

(iii) Name a principal nominee, with nine alternates in order of preference.

(2) The priority that a fully qualified candidate may receive when considered for appointment is actually governed by the method of nomination used. For example, a principal nominee who is found minimally qualified must be offered an appointment. Conversely, the same individual nominated on a totally competitive basis, may be ranked as one of the least qualified nominees for that vacancy and, consequently, may not be offered an appointment. Many nominating authorities hold preliminary competitive nomination examinations to select their nominees. Those selected are required to be actual residents of the geographic location represented by the nominating authority.

(b) *Service-connected nominations.* There is no restriction on the residence of nominees who compete for an appointment under these quotas. All applications for a service-connected nomination must be submitted to the Superintendent, United States Military Academy, West Point, NY 10996, not later than 15 December for the class entering the following July. A description of the Service-Connected nomination catergories follows:

(1) Presidential: Children of career military personnel in the Armed Forces who are on active duty, retired, or deceased, are nominated through this category. The term "career" includes members of the Reserve Components currently serving 8 or more years of continuous active duty and Reserve retirees receiving either retired or retainer pay. Children of reservists retired while not on active duty are ineligible. Applications should include the name, grade, social security number/service number, and branch of service of the parent as a member of such regular component, and the full name, address, and date of birth of the applicant (complete military address and social security number, if in the Armed Forces). Adopted children are eligible for appointment if they were adopted prior to their 15th birthday; a copy of the order of court decreeing adoption, duly certified by the clerk of the court, must accompany the application.

(2) Children of Deceased and Disabled Veterans: This category is for children of deceased or 100 percent disabled Armed Forces veterans whose deaths or disabilities were determined to be service-connected, and for children of military personnel or federally employed civilians who are in a missing or captured status. Candidates holding a nomination under this category are not eligible for nomination under the Presidential or Medal of Honor category. The Veterans Administration determines the eligibility of all applicants. The application should include the full name, date of birth, and address of the applicant (complete service address should be given if the applicant is in the Armed Forces), and the name, grade, social security number/service number, and last organization of the veteran parent, together with a brief statement concerning the time, place, and cause of death. The claim number assigned to the veteran parent's case by the Veterans Administration should also be furnished.

(3) Children of Persons Awarded the Medal of Honor: Applications from children of persons awarded the Medal of Honor should contain the applicant's full name, address, and date of birth (complete service address should be given if the applicant is in the Armed Forces); the name, grade, and branch of service of the parent; and a brief statement of the date and circumstances of the award. Candidates appointed from this source may qualify in the same manner as a congressional principal candidate. All who are found fully qualified will be admitted as cadets, regardless of the number.

(4) Honor Military Schools: Certain Honor Military Schools designated by Department of the Army, Department of the Navy, and Department of the Air Force are invited to recommend three candidates for nomination annually from among their honor graduates. Appointments are filled by selecting the best qualified candidates regardless of the school from which nominated. Application should be made through the school Senior Army Instructor.

(5) Army ROTC: This category is for members of college and high school Army Reserve Officers' Training Corps units. Application should be made through the Professor of Military Science or Senior Army Instructor at the school.

(6) Regular Army: This category is for enlisted members of the active Army. Appointments may be awarded to 85 Regular Army candidates. Application for admission, through command channels to the United States Military Academy Preparatory School (USMAPS) constitutes application for nomination under this category.

(7) Reserve Components: This category is for enlisted members of the Army Reserve and Army National Guard. Application for admission should be made through command channels to USMAPS. Enlisted members who are not on active duty should apply to the Commandant, United States Military Preparatory School, Fort Monmouth, New Jersey 07703.

(c) *Filipino cadets.* The Secretary of the Army may permit each entering class one Filipino, designated by the President of the Republic of the Philippines, to receive instruction at the United States Military Academy.

(d) *Foreign cadets.* The law permits 20 persons at a time from the Latin-American Republics and Canada to receive instruction at the United States Military Academy. A maximum of three persons from any one country may be cadets at the same time. Such persons receive the same pay and allowances (including mileage from their homes in proceeding to the Military Academy for initial admission) as cadets appointed from the United States. However, they are not entitled to appointment in the United States Armed Forces upon graduation. Citizens of other foreign countries have been permitted from time to time to attend the Military Academy upon specific authorization of the United States Congress in each case. Applications must be submitted to the United States Government through diplomatic channels by the governments concerned. Requirements for the admission, advancement, and graduation of foreign cadets are similar to those for United States Cadets.

§ 575.4 [Reserved]

§ 575.5 Entrance requirements.

This section describes the specific requirements which candidates must fulfill in addition to obtaining an appointment as outlined in § 575.3.

(a) *Age.* On 1 July of the year admitted to the Military Academy a candidate must be at least 17 years of age and must not have passed his/her 22d birthday. The age requirements for all candidates are statutory and cannot be waived.

(b) *Citizenship.* A candidate must be a citizen of the United States, except those appointed specifically as foreign cadets.

(c) *Character.* Every candidate must be of good moral character.

(d) *Marital Status.* A candidate must be unmarried and not be pregnant or have a legal obligation to support a child or children.

§ 575.6 Catalogue, United States Military Academy.

The latest edition of the catalogue, United States Military Academy, contains additional information regarding the Academy and requirements for admission. This publication may be obtained free of charge from the Registrar, United States Military Academy, West Point, NY 10996, or from the United States Army Military Personnel Center, HQDA (DAPC-OPP-PM), 200 Stovall Street, Alexandria, VA 22332.

[FR Doc. 79-6228 Filed 3-1-79; 8:45 am]

[7035-01-M]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. No. 1360]

PART 1033—CAR SERVICE

Chicago, Milwaukee, St. Paul and Pacific Railroad Co. Authorized to Operate Unit-Coal-Trains Comprised of 75 Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order, Service Order No. 1360.

SUMMARY: The Chicago, Milwaukee, St. Paul and Pacific Railroad Company operates unit-coal-trains between Gascoyne, North Dakota, and Big Stone City, South Dakota. The tariff requires movement of 100 cars of 9,000 tons in each train. Because of a shortage of locomotive power, MILW is authorized to operate these unit-coal-trains with 75 cars.

DATES: Effective 12:01 a.m., February 24, 1979. Expires 11:59 p.m., May 15, 1979.

FOR FURTHER INFORMATION CONTACT:

J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C., 20423, Telephone (202) 275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The order is printed in full below.

Decided February 23, 1979.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) operates unit-coal-trains between Gascoyne, North Dakota, and Big Stone City, South Dakota. That line has published certain rates in MILW Tariff 18739, I.C.C. B-8365 which require the use of 100 cars of 9,000 tons per shipment from Gascoyne to Big Stone City. Because of the shortage of locomotive power MILW is unable to operate this train with 100 cars. A reduction in train size to 75 cars will enable the MILW to make a more effective use of its motive power and better utilization of its hopper cars.

It is the opinion of the Commission that an emergency exists and that there is good cause to authorize MILW to operate these unit-coal-trains with 75 cars in the interest of the public and the commerce of the people. The Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1360 Service Order No. 1360.

(a) Chicago, Milwaukee, St. Paul and Pacific Railroad Company authorized to operate unit-coal-trains comprised of 75 Cars. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) is authorized to waive the one hundred (100) car, 9,000 tons requirement provided in MILW Tariff 18739, I.C.C. B8365, and is authorized to operate unit-coal-trains comprising seventy-five (75) cars from Gascoyne, North Dakota, to Big Stone City, South Dakota.

(b) The deficit tonnage may, with the consent of the carrier, be added to the tonnage transported in one or more of the subsequent trips required by the tariff. If the carrier fails to give its consent or if the shipper notifies the carrier that it will be impossible to add the deficit tonnage to subsequent consecutive shipments, the total annual volume requirement will be reduced by that amount.

(c) Nothing in this order shall be deemed to authorize any change in minimum weights required by the applicable tariff to be loaded into each car nor to authorize the loading of any car in excess of its stencilled load limit.

(d) *Consent of Shipper Required.* The consent of the shipper is required before any unit-coal-train is operated with a reduced number of cars as authorized by Section (a) of this order.

(e) *Billing to be Endorsed.* The bills of lading and the master waybills of each unit-coal-train authorized by this order shall bear the following endorsement: "Unit-coal-train comprising (——) cars or (——) tons. Reduction of train from (——) or (——) tons authorized by ICC Service Order No. 1360."

(f) *Application.* (1) The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(2) All tariff provisions not specifically modified by this order shall remain in effect.

(3) The application of all other rules and regulations, insofar as they conflict with the provisions of this order is suspended.

(g) *Effective date.* This order shall become effective at 12:01 a.m., February 24, 1979.

(h) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., May 15, 1979, unless otherwise modified, changed or suspended by order of this Commission.

(49 U.S.C. (10304-10305 and 11121-11126))

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-6389 Filed 3-1-79; 8:45 am]

[7035-01-M]

SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex. Parte No. 277 (Sub-No. 3)]

PART 1124—REGULATIONS GOVERNING THE ADEQUACY OF INTERCITY RAIL PASSENGER SERVICE

Notice and Revision of Rules

AGENCY: Interstate Commerce Commission.

ACTION: Notice and revision of rules.

SUMMARY: The Commission is publishing corrections and minor amendments to its rail passenger service regulations. The revisions reflect previously adopted modifications which were not included in the published rules, correct a language omission, and clarify certain other language.

EFFECTIVE DATE: February 27, 1979.

FOR FURTHER INFORMATION CONTACT:

G. Marvin Bober (202) 275-7564.

SUPPLEMENTARY INFORMATION:

DECISION OF THE COMMISSION

We are reopening this proceeding on our own motion pursuant to 49 U.S.C. 10327(g)(2) (formerly section 17(9)(g) of the Interstate Commerce Act). We have discovered that the Regulations Governing the Adequacy of Intercity Rail Passenger Service as appearing in the Code of Federal Regulations, 49 CFR Part 1124 (1977), require minor revision. A number of previously adopted modifications are not reflected, certain language is omitted, and other language requires clarification. The revisions adopted here do not contemplate any substantive change in the rules but merely correct publication or other errors and amplify or explain existing requirements. Our action therefore falls within the exception to section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b), and notice of and hearing on revisions are not required.

49 CFR 1124.2(f). By order dated November 24, 1976, the Commission revised § 1124.17 to conform to the requirements of the Rail Transportation Improvement Act, Pub. L. No. 94-555, 90 Stat. 2613 (1976), and to delete unnecessary provisions. The statement of passenger rights required by § 1124.2(f) synopsizes passenger service rules, and the noted revision of § 1124.17 necessitates a concomitant revision of the statement. Section 1124.2(f) shall be amended as set forth in the appendix.

49 CFR 1124.13(b)(2). The Code of Federal Regulations omits certain language from § 1124.13(b)(2) as the Commission adopted that provision in the 1976 report in this proceeding. *See* 351 I.C.C. 883, 999 (1976). A corrected § 1124.13(b)(2) is set forth in the appendix.

49 CFR 1124.13(f). By order dated June 17, 1976, the Commission repealed § 1124.13(f). The regulations should reflect the deletion, as set forth in the appendix.

49 CFR 1124.17. As noted in the discussion of § 1124.2(f), the Commission has revised § 1124.14 to conform to new legislation and delete unnecessary provisions. The amended § 1124.17 is set forth in the appendix.

49 CFR 1124.20(d). The statement of passenger rights in § 1124.2(f) indicates that coaches must have drinking water and clean restrooms, referring to Rule 20 (§ 1124.20). Although § 1124.20 requires all cars and restroom facilities to be clean, as presently written it does not mention a requirement to provide restrooms and drinking water. Prior to the 1976 revision, the regulations plainly included such requirements, however. *See* 49 CFR 1124.20(a) (1975). The Commission's 1976 report in this proceeding, 351 I.C.C. 883, inadvertently omitted the restroom and drinking water requirements from the revised § 1124.20. The clear intent was to retain those rules, as demonstrated by their retention in § 1124.2(f). Section 1124.20(d) shall be amended as set forth in the appendix.

We find that the revisions set forth in the appendix are reasonable and necessary, and that this decision will not affect the quality of the human environment.

It is ordered: The revisions to the Commission's Regulations Governing the Adequacy of Intercity Rail Passenger Service set forth in the appendix are adopted.

Except as corrected or amended by this decision, the regulations published in part 1124 of Title 49 of the Code of Federal Regulations shall remain in full force and effect.

Notice of this decision shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the FEDERAL REGISTER.

This decision shall become effective on the date it is served.

Decided: February 5, 1979.

By the Commission. Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian.

H. G. HOMME, Jr.,
Secretary.

APPENDIX

PART 1124—REGULATIONS GOVERNING THE ADEQUACY OF INTERCITY RAIL PASSENGER SERVICE

1. In § 1124.2, paragraph (f) is amended in part to read as follows:

§ 1124.2 Regulations regarding applicability, exemptions, and information to be provided to passengers.

* * * * *

(f) * * *

ADEQUACY OF SERVICE

* * * * *

Food and Beverages (Rule 17): Carriers operating trains which travel for 2 hours or more shall make complete meals available during customary dining hours.

* * * * *

2. In § 1124.13, subparagraph (2) of paragraph (b) is amended to read as follows:

§ 1124.13 Facilities for checked baggage in stations.

* * * * * *

(b) * * *

* * * * *

(2) That it has adequate baggage assistance on board trains stopping at the station in question to enable the passengers at that station to have their baggage placed on the train, and, if possible on trains with checked-baggage service, to have their baggage checked if they so desire.

* * * * *

3. Section 1124.13 is amended by deleting § 1124.13(f).

4. Section 1124.17 is amended to read as follows:

§ 1124.17 Food and beverage service.

Carriers operating trains which travel for 2 hours or more shall make complete meals available during customary dining hours.

5. In § 1124.20, paragraph (d) is amended to read as follows:

§ 1124.20 Car requirements.

* * * * *

(d) All coaches shall have functioning restroom facilities and drinking water available. All cars and restroom facilities shall be sanitary, watertight, and free of debris and objectionable odors. No exemption can be made to this regulation, which relates to health.

* * * * *

[FR Doc. 79-6399 Filed 3-1-79; 8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 929]

HANDLING OF CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

Proposed Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The proposed action would establish eligibility requirements and procedures for nominating the public member on the Cranberry Marketing Committee established under marketing Order No. 929.

DATE: Comments must be received on or before March 13, 1979.

ADDRESS: Comments should be filed in duplicate with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, telephone (202) 447-6393.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department is considering proposed amendment, as hereinafter set forth, of the rules and regulations (Subpart—Rules and Regulations; 7 CFR 929.101 et seq.) currently in effect pursuant to the applicable provisions of the amended marketing agreement and Order No. 929, as amended (7 CFR Part 929; 43 FR 29764). The order regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. This is a regulatory program effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The proposal to amend said rules and regulations was recommended by the Cranberry Marketing Committee established under the order as the agency to administer the terms and provisions thereof.

Section 929.20 of the amended order specifies that the Cranberry Marketing Committee, consisting of seven industry members and alternates, may be increased by one public member and alternate nominated by the committee and selected by the Secretary. This section further provides that the committee, with the approval of the Secretary, shall prescribe qualifications and the procedure for nominating the public member and alternate.

The proposed eligibility requirements specify that the public member shall not represent an agricultural interest and shall not be financially interested in or associated with the production, processing, financing or marketing of cranberries. It also provides that public members should attend committee activities regularly and familiarize themselves with the background and economics of the cranberry industry. The proposal specifies a procedure to secure qualified candidates for the public member and alternate member positions and provides that the names of persons nominated by the committee for such positions be submitted to the Secretary. The public member and alternate serve two-year terms of office which coincide with the term of industry members of the committee.

The proposal is to add a new section reading as follows:

929.160 Public member eligibility requirements and nomination procedures.

(a) Public member and alternate member candidates shall not represent an agricultural interest and shall not have a financial interest in, or be associated with the production, processing, financing, or marketing of cranberries.

(b) Public member and alternate member candidates should be able to devote sufficient time to attend committee activities regularly and to familiarize themselves with the background and economics of the cranberry industry.

(c) Names of candidates together with evidence of qualification for public membership on the Cranberry Marketing Committee shall be submitted to the committee at its business office, 147 Everett Street, or P.O. Box 800, Middleboro, MA 02346.

(d) Questionnaires shall be sent by the committee to those persons submitted as candidates to determine their eligibility and interest in becoming a public member.

(e) The names of persons nominated by the committee for the public member and alternate positions shall be submitted to the Secretary with such information as deemed pertinent by the committee or as requested by the Secretary.

(f) Public members shall serve a two-year term which coincides with the term of office of industry members of the committee.

This action has not been determined significant under the USDA criteria for implementing Executive Order 12044.

Dated: February 26, 1979.

D. S. KURYLOSKI,
Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-6094 Filed 3-1-79; 8:45 am]

[7535-01-M]

NATIONAL CREDIT UNION ADMINISTRATION

[12 CFR 701]

ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

Fees Paid by Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: The National Credit Union Administration (NCUA) proposes to amend its regulations by changing the method of assessing fees on Federal credit unions. The amendments will replace separate charges for chartering, supervision, and examination with a single operating fee payable by all operating Federal credit unions. Recent legislation now permits the NCUA Board to assess fees in accordance with schedules and for time periods in an amount necessary to offset the expenses of the NCUA at a rate consistent with a credit union's ability to pay.

DATE: Comments must be received on or before March 26, 1979.

ADDRESS: Send comments to Robert S. Monheit, Senior Attorney, Office of

General Counsel, National Credit Union Administration, Room 4202, 2025 M Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT:

John R. Sander, Budget Officer, Office of the Comptroller, National Credit Union Administration, 2025 M Street, N.W., Washington, D.C. 20456. Telephone (202) 254-9825.

SUPPLEMENTARY INFORMATION:

1. *Background.* Historically, three separate fees have been assessed on Federal credit unions to offset the expenses of the Administration incurred in the normal performance of its regulatory duties consistent with the Federal Credit Union Act. First, a charter and investigation fee of $25 has been assessed for each newly chartered Federal credit union. Second, a supervision fee based upon credit union assets as of the end of the calendar year, at a scale as set forth in the Federal Credit Union Act, has been assessed each year. Finally, an examination fee has been charged and collected at the conclusion of each examination of a Federal credit union. This fee has been based upon a combination of the amount of time taken to complete the examination and on the assets of the Federal credit union as of the effective date of the examination.

The Financial Institutions Regulatory and Interest Rate Control Act of 1978 (Public Law 95-630) amended sections 105 and 106 of the Federal Credit Union Act which deal with the fees that the National Credit Union Administration Board may assess Federal credit unions. The law now permits the Administration to assess fees in accordance with schedules, and for time periods, as determined by the Board, in an amount necessary to offset the expenses of the Administration at a rate consistent with a credit union's ability to pay. Consistent with Public Law 95-630, the Administration proposes to replace the separate charges for chartering, supervision, and examination with a single operating fee payable by all operating Federal credit unions.

2. *Purpose of Operating Fee.* The operating fee has been established to meet the following objectives:

a. To generate income sufficient to offset anticipated expenditures of the Administration in carrying out its responsibilities under Title I of the Federal Credit Union Act;

b. To develop a scale of assessment which is approximately the same as that which would be paid if supervision and examination fees were continued;

c. To reduce some of the inequities of the current fee structure regarding the size of the credit union and its ability to pay; and

d. To develop a means of assessment that can be easily administered and involves less paper work than presently required.

In the past, NCUA has conducted annual examinations of all Federal credit unions. Due to budget restraints it will not be possible nor feasible to examine each Federal credit union every year as has been done in the past. Instead, examinations will be performed when deemed necessary. The determination of which credit unions are to be examined will depend on a number of factors such as: size, risk to the National Credit Union Share Insurance Fund, services provided members, liquidity, diversification of operations, prevalence of critical problems, and external factors affecting credit union operations such as local economic conditions.

An advantage to the operating fee is that it is a single charge which covers all operational costs of NCUA. These costs include not only examination, supervision, and chartering, but also the administrative expenses for the promulgation of rules and regulations, legal counsel, research, consumer affairs, publications, data processing, legislative activities, Congressional inquiries, personnel administration, and training. Previously, separate supervision and examination fees provided the funding for these activities creating additional paperwork and expense.

3. *Scale of Fees.* Attachment A includes the operating fee scale to be used by Federal credit unions in calculating the assessment for calendar year 1979. Normally, the operating fee will be due and payable by January 31 based on the assets as of the end of the previous calendar year. However, for the first year the payment based on assets as of December 31, 1978, will be due 30 days after publication of the final rule in the FEDERAL REGISTER. Invoices will be mailed to each individual Federal credit union prior to that time.

Attachment B contains a comparison of the existing fee structure, which included the examination fee plus the supervision fee, versus the total under the proposed operating fee structure. As is evident, smaller credit unions will pay slightly less while those credit unions in the larger asset categories will pay slightly more. For most credit unions the variance will be insignificant.

4. *New Charters.* Under existing policy, newly chartered credit unions were assessed a $25 charter and investigation fee. This fee had no relationship to the actual costs involved in the process. Under the proposed rule, assessments received from the operating fee will apply to expenses incurred in the chartering of new Federal credit unions.

The Administration desires to place as little financial burden as possible upon newly chartered credit unions by not charging any fees until a full calendar year of operations has been completed. For example, if a credit union begins operations on July 1, 1979 it would not be required to pay a fee in 1979 or 1980. The first operating fee would be paid in January 1981, 18 months after commencing operations.

5. *Liquidation.* Once a credit union enters voluntary or involuntary liquidation, no fees will be assessed. The operating fee already paid by the credit union in the calendar year of liquidation will not be refunded.

6. *Conversions.* State credit unions converting to a Federal charter will pay the operating fee the January following conversion. Federal credit unions converting to state charter will not be refunded any portion of the operating fee paid in the year in which they convert to the state charter.

7. *Mergers.* In the case where a Federal credit union merges with either another Federal credit union or a state chartered credit union, it will receive no refund of the operating fee paid for the year in which it merges.

8. *Changes to the Fee Structure.* The proposed regulation provides that credit unions will be notified 30 days in advance of any change to the fee schedule.

Accordingly, it is proposed that 12 CFR 701 be amended as set forth below.

LAWRENCE CONNELL,
Acting Administrator.

FEBRUARY 26, 1979.

AUTHORITY: Section 105, 93 Stat. 3652 (12 U.S.C. 1755), Section 120, 73 Stat. 635 (12 U.S.C. 1766) and Section 209, 84 Stat. 1104 (12 U.S.C. 1789).

§ 701.1 [Amended]

1. Section 701.1 *Organization of Federal credit unions,* paragraph (c) would be amended:

(1) By deleting the language "together with a check or money order payable to the National Credit Union Administration in the amount of $25 in payment of the investigation fee of $20 and charter fee of $5. The Regional Director", and by inserting in lieu thereof the word "who"; and

(2) By inserting a "." after the word "action" in the sixth sentence and by deleting the language "and the charter fee of $5 shall be returned to them. Under no circumstances shall the investigation fee of $20 be returned."

2. Section 701.6 would be revised to read as follows:

§ 701.6 Fees paid by Federal credit unions.

(a) *Basis for assessment.* Not later than January 31 of each calendar year, each Federal credit union shall pay to the Administration for the current calendar year an operating fee in accordance with a schedule as fixed from time to time by the National Credit Union Administration Board based on the total assets of each Federal credit union as of December 31 of the preceding year.

(b) *Coverage.* The operating fee shall be paid by each Federal credit union engaged in operations as of January 1 of each calendar year. Newly chartered Federal credit unions will not pay an operating fee until January 31 of the year following the first full calendar year after the date chartered. Federal credit unions merging with other Federal or state credit unions and Federal credit unions converting to state charter will not receive a refund of the operating fee paid to the Administration in the year in which the merger or conversion takes place. State chartered credit unions that convert to Federal charter will pay an operating fee on January 31 of the year following the conversion to a Federal charter. Federal credit unions in liquidation will not pay any operating fee after the date of liquidation.

(c) *Notification.* Each Federal credit union shall be notified at least 30 days in advance of the schedule of fees to be paid. A Federal credit union may submit written comments to the Board for consideration regarding the existing fee schedule. Any subsequent revision to the schedule shall be provided to each Federal credit union at least 15 days before payment is due.

(d) *Calendar Year 1979 Operating Fee.* For the calendar year 1979 the operating fees payable by each Federal credit union will be due 30 days after the effective date of this regulation. The basis for assessment and the coverage of the fees remain the same as stated in paragraphs (a) and (b) of this section.

§§ 701.7 and 701.8 [Deleted]

Sections 701.7 *Fee for examination* and 701.8 *Fee for examination of Federal credit unions in liquidation* would be deleted.

ATTACHMENT A

OPERATING FEE COMPUTATION

Determine the total amount of assets of your Federal credit union as of December 31 of the calendar year shown in accordance with instructions for closing the books contained in the Accounting Manual for Federal Credit Unions. Enter the amount in the appropriate space.

Compute the amount of operating fee payable from the scale shown and enter the amount in the appropriate space.

OPERATING FEE SCALE

Total Assets and Fee

Under $25,000 $3 per $1,000 but not less than $10

Over $25,000 $75.00, plus $2.50 per $1,000 for assets in excess of $25,000

Over $50,000 $137.50, plus $2.20 per $1,000 for assets in excess of $50,000

Over $100,000 $247.50, plus $1.40 per $1,000 for assets in excess of $100,000

Over $250,000 $457.50, plus $1.10 per $1,000 for assets in excess of $250,000

Over $500,000 $732.50, plus $.65 per $1,000 for assets in excess of $500,000

Over $1,000,000 $1,057.50, plus $.50 per $1,000 for assets in excess of $1,000,000

Over $2,000,000 $1,557.50, plus $.44 per $1,000 for assets in excess of $2,000,000

Over $5,000,000 $2,877.50, plus $.22 per $1,000 for assets in excess of $5,000,000

Over $20,000,000 $6,177.50, plus $.21 per $1,000 for assets in excess of $20,000,000

Over $50,000,000 $12,477.50, plus $.20 per $1,000 for assets in excess of $50,000,000

Over $100,000,000 $22,477.50, plus $.19 per $1,000 for assets in excess of $100,000,000

The above scale is applied to even thousand-dollar units with fractional parts of $1,000 dropped.

ATTACHMENT B—*Comparisons—Existing Fee Structure which Includes Examination Fee Plus Supervision Fee (10 percent Reduction) Verus Total to be Paid Under Proposed Operating Fee Structure*

FCU assets	Existing fees[1] Total	Operating fee	Dollar Difference	Percent difference
$12,500	$72.50	$37.50	−35.00	−48.3
37,500	183.78	106.25	−77.53	−42.2
75,000	234.15	192.50	−42.65	−18.2
175,000	351.95	352.50	+0.55	+0.2
375,000	587.55	595.00	+7.45	+1.3
750,000	886.65	895.00	+8.34	+0.9
1,500,000	1,291.30	1,307.50	+16.20	+1.3
3,500,000	2,183.03	2,217.50	+34.47	+1.6
7,500,000	3,431.28	3,427.50	−3.78	−0.1
15,000,000	5,013.55	5,077.50	+63.95	+1.3
20,000,000	6,321.30	6,177.50	−143.80	−2.3
30,000,000	8,221.30	8,277.50	+56.20	+0.7
40,000,000	10,121.30	10,377.50	+256.20	+2.5
50,000,000	12,021.30	12,477.50	+456.20	+3.8
100,000,000	21,521.30	22,477.50	+956.20	+4.4

[1]The average examination time experienced in fiscal year 1978 was used in determining the examination fee that would normally be collected from each credit union.

[FR Doc. 79-6098 Filed 3-1-79; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 108]

LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

Participation by the Development Company

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The local development company (LDC) loan program requires community support of economic development by utilizing a local development company to marshal the planning, economic and financial resources of communities to assist small business development. The Small Business Administration (SBA) proposes to expand the sources and amounts of community injection funds authorized to be used by LDC's. The amendments implement recent legislation and will make it easier for the LDC's to obtain the required amount of injection funds.

DATE: Comments must be received by May 1, 1979.

ADDRESS: Comments submitted in duplicate are to be addressed to Associate Administrator for Finance and Investment, Small Business Administration 1441 L Street, N.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT:

Wendell E. Hulcher, Director Office of Neighborhood Business Revitalization, Small Business Administration, Washington, D.C. 20416, (202) 653-6375.

SUPPLEMENTARY INFORMATION: Pub. L. 95-507 § 112 amended Section 502 of the Small Business Investment Act of 1958 by adding at the end of paragraph (4) the following new sentence: "Community injection funds may be derived, in whole or in part, from—

(A) State or local government;

(B) banks or other financial institutions;

(C) foundations or other not-for-profit institutions; or

(D) a small business concern (or its owners, stockholders, or affiliates) receiving assistance through bodies authorized under this title."

The local development company (LDC) loan program requires community support of economic development by utilizing a local development company to marshal the planning, economic and financial resources of communities to assist small business development. As the small business concerns grow and prosper, the community benefits by increased employment and an enlarged tax base. The amendments contained in Pub. L. 95-507 authorized a liberalization of the amount of the LDC's injection which may be furnished by the small business concern to be assisted and also gave legislative recognition to some sources of funds which were being utilized by some LDC's.

The proposed regulations set forth the conditions under which funds contributed or loaned by these sources will be considered the "paid-in capital"

of the local development company. We also state the circumstances under which a small business concern (SBC) or concerns may provide more than the previously authorized amount of the LDC's injection. We believe these exceptional circumstances assure the statutory requirement for the basic involvement of the local development company while allowing the flexibility of operation and utilization of available financing which is necessary for multiproject development companies. The proposed amendment also retains the independence of the LDC which we consider required by the basic legislation.

Accordingly, pursuant to authority contained in Section 308(c) of the Small Business Investment Act of 1958 (SBI Act); 15 U.S.C. 687, as amended, notice is hereby given that SBA proposes to amend Part 108 § 108.502 and § 108.502-1 as follows:

1. Section 108.502 by deleting the present paragraphs and substituting the following:

§ 108.502 Statutory provisions.

The relevant statutory provisions will be found at 15 U.S.C. 696.

2. Section 108.502-1 by renumbering the present paragraph (e) as (e)(i) and adding the following:

§ 108.502-1 Section 502 loans.

* * * * *

(e) *Participation by the development company.* (1) * * *

(2) Paid-in capital may also be derived, by way of example and not of limitation from money contributed to the development company by State or local governments, banks or other financial institutions, foundations or other not-for-profit institutions, or the SBC (or its owners, stockholders or affiliates) receiving assistance from the LDC.

(3) Contributions or loans to an LDC from any source may not be conditioned on the granting of voting rights, stock options, or any other type of pecuniary interest in or control of the development company or the SBC's being assisted;

(4) An SBC (its owners, stockholders, affiliates or associates) or anyone with a pecuniary interest in the project may not provide more than 25 percent of the LDC's required injection in any project except that, if the LDC has demonstrated a broad base of community participation in its operations, a depth of organization which assures continued operation and has participated in two or more projects which have, at least temporarily, exhausted the LDC's ability to raise funds from other sources, the SBC may provide up to 100 percent of the LDC's injection. The LDC and Bank/SBA must determine that furnishing an increased share of the injection will not adversely affect the working capital postion of such SBC.

(5) An exception to the prohibition against the SBC providing more than 25 percent of the LDC's injection may also be made when the LDC's proposed project involves multiple SBC's (four or more) which are located in a target area (neighborhood revitalization, etc.) or an area of socially and economically disadvantaged groups or when the SBC's have been dislocated by Federal or State construction, urban renewal or similar causes.

(Catalog of Domestic Assistance Programs No. 59.013 State and Local Development Company Loans)

A. VERNON WEAVER,
Administrator.

Dated: February 23, 1979.

[FR Doc. 79-6434 Filed 3-1-79; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 436, 455, 555]

[Docket No. 78N-0414]

STERILE CHLORAMPHENICOL, STERILE CHLORAMPHENICOL SODIUM SUCCINATE, AND CHLORAMPHENICOL INJECTION

Deletion of Histamine Test

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the antibiotic drug regulations by deleting the histamine test from certain chloramphenicol monographs for human and veterinary use. This test can be eliminated as unnecessary because of changes in the method of producing these antibiotic drugs.

DATE: Comments by May 1, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Joan Eckert, Bureau of Drugs (HFD-140), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: At the request of a manufacturer, the Commissioner of Food and Drugs proposes to amend the antibiotic drug regulations by deleting the histamine test and requirement from the monographs providing for sterile chloramphenicol, sterile chloramphenicol sodium succinate, and chloramphenicol injection for both human and veterinary use.

Approximately 25 years ago, histamine or histamine-like substances were discovered to be present in certain antibiotic drugs produced during the biological fermentation process by the microorganism genus *Streptomyces.*

The histamine test was developed to detect these substances, which may remain if the drug is improperly purified. If injected into the patient, even in small amounts, these substances can have a depressor effect to the body, particularly in blood pressure level.

Chloramphenicol was one of the antibiotics produced by a streptomycete, *Streptomyces venezuela.* Therefore, testing for histamine was a certification requirement.

However, chloramphenicol from all sources has been produced by chemical synthesis rather than by fermentation for several years. Because the change in the manner of production has eliminated the formation of histamine-like substances, the histamine test is no longer necessary. Neither the manufacturer requesting the change nor FDA's own laboratory has reported histamine test failures for batches produced by chemical synthesis.

So that the regulations may reflect only the most appropriate methods of assay, the Commissioner is proposing that the histamine test for both human and veterinary use be deleted from the appropriate monographs.

The Food and Drug Administration has determined that this document does not contain an agency action covered by § 25.1(b) (21 CFR 25.1(b)) and that consideration by the agency of the need for preparing an environmental impact statement is not required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 512(n), 59 Stat. 463 as amended, 82 Stat. 350-351 (21 U.S.C. 357, 360b(n))) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes that Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

SUBCHAPTER D—DRUGS FOR HUMAN USE

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

§ 436.35 [Amended]

1. Part 436 is amended in § 436.35 *Histamine test* by deleting the items "Chloramphenicol" and "Chloram-

phenicol sodium succinate" from the table in paragraph (c).

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

2. Part 455 is amended:

a. In § 455.10a by deleting and reserving paragraphs (a)(1)(v) and (B)(5) and by revising paragraph (a)(3)(i) to read as follows:

§ 455.10a Sterile chloramphenicol.

(a) * * *

(1) * * *

(v) [Reserved]

* * * * * *

(3) * * *

(i) Results of tests and assays on the batch for potency, sterility, pyrogens, safety, pH, specific rotation, melting range, absorptivity, and crystallinity.

* * * * *

(b) * * *

(5) [Reserved]

* * * * *

b. In § 455.12a by deleting and reserving paragraphs (a)(1)(v) and (b)(5) and by revising paragraph (a)(3)(i), to read as follows:

§ 455.12a Sterile chloramphenicol sodium succinate.

(a) * * *

(1) * * *

(v) [Reserved]

* * * * *

(3) * * *

(i) Results of tests and assays on the batch for potency, sterility, pyrogens, safety, moisture, pH, and specific rotation.

* * * * *

(b) * * *

(5) [Reserved]

* * * * *

(c) In § 455.210 by revising paragraphs (a)(1) and (3)(i)(*b*), and by deleting and reserving paragraph (b)(5) to read as follows:

§ 455.210 Chloramphenicol injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Chloramphenicol injection is chloramphenicol, with or without one or more suitable and harmless buffer substances, dissolved in one or more suitable and harmless solvents. Each milliliter contains 250 milligrams of chloramphenicol. Its potency is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of chloramphenicol that it is represented to contain. It is sterile. It is nonpyrogenic. It passes the safety test. Its pH is not less than 4.7 and not more than 5.0. The chloramphenicol used conforms to the standards prescribed by § 455.10a(a)(1).

* * * * *

(3) * * *

(i) * * *

(*b*) The batch for potency, sterility, pyrogens, safety, and pH.

* * * * *

(b) * * *

(5) [Reserved]

* * * * *

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 555—CHLORAMPHENICOL DRUGS FOR ANIMAL USE

3. Part 555 is amended in § 555.210 by revising paragraph (a)(1) and (4)(i)(*b*) and by deleting and reserving paragraph (b)(5) to read as follows:

§ 55.210 Chloramphenicol injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Chloramphenicol injection is a solution containing chloramphenicol and one or more suitable and harmless buffers and preservatives in an organic solvent vehicle. Each milliliter contains 100 milligrams of chloramphenicol. The chloramphenicol content is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of chloramphenicol that it is represented to contain. It is sterile. It is nonpyrogenic. It passes the safety test. Its pH is not less than 6.5 and not more than 8.5. The chloramphenicol used conforms to the standards prescribed by § 455.10a(a)(1) of this chapter.

* * * * *

(4) * * *

(i) * * *

(*b*) The batch for potency, sterility, pyrogens, safety, and pH.

* * * * *

(b) * * *

(5) [Reserved]

* * * * *

Interested persons may, on or before May 1, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: February 26, 1979.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-6222 Filed 3-1-79; 8:45 am]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[LR-224-76]

SUPPORT TEST FOR CHILDREN OF DIVORCED, ETC., PARENTS

Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the support test for dependent children of divorced, etc., parents. Changes to the applicable tax law were made by the Tax Reform Act of 1976. The regulations would provide taxpayers with the guidance needed to comply with that Act and would affect divorced or separated parents.

DATES: Written comments and request for a public hearing must be delivered or mailed by May 1, 1979. The amendments are proposed to be effective for taxable years beginning after October 4, 1976.

ADDRESS: Send comments and request for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-224-76), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Annie R. Alexander of the Legislation and Regulations Division, Office

of the Chief Counsel, Internal Revenue Service, 202-566-3671, not a toll-free call.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 152 (e) of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 2139 of the Tax Reform Act of 1976 (90 Stat. 1932) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

EXPLANATION OF THE REGULATIONS

Section 152 (a) defines "dependent", as certain persons, over half of whose support is received or treated as received in a calendar year from the taxpayer. Section 152 (e) provides special rules for children of parents who are divorced, or legally separated under a decree of divorce or separate maintenance, or who are separated under a written separation agreement. These rules apply to such children if they receive over half of their support during the year from their parents and are in the custody of one or both parents for more than half of the calendar year.

Under section 152 (e)(2)(B) a noncustodial parent is treated as having provided over half the child's support during a calendar year if the noncustodial parent provides at least $1,200 for the support of the child during the calendar year and the custodial parent does not establish that the custodial parent has provided more than the noncustodial parent. Before it was amended by section 2139 of the Act, section 152 (e)(2)(B) also treated a noncustodial parent as having provided over half the support of a child during a calendar year if there was more than one child and if the noncustodial parent provided at least $1,200 for the combined support of the child and all other such children during the calendar year and the custodial parent did not establish that the custodial parent provided more for the support of the child than the noncustodial parent. Section 2139 of the Act amends section 152 (e)(2)(B) by eliminating the $1,200 combined support test that was available if there was more than one child.

These proposed amendments conform the regulations under section 152 (e) to the changes made by section 2139 of the Act.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of these proposed regulations is Annie R. Alexander of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Part 1 are as follows:

§ 1.152 [Deleted]

Paragraph 1. Section 1.152 is deleted.

Par. 2. Section 1.152-4 is amended by revising paragraph (d) (3) and adding new examples to paragraph (f). The revised and added provisions read as follows:

§ 1.152-4 Support test in case of child of divorced or separated parents.

* * * * *

(d) *Exceptions.* * * *

(3) *Actual support.* A noncustodial parent who provides $1,200 or more support for the child (or, for taxable years beginning before October 5, 1976, if there is more than one child for which he claims an exemption, $1,200 or more for the combined support for all of such children) shall be treated as having provided more than half the support for the child (or children) notwithstanding any provision to the contrary contained in a decree of divorce or separation or in a written agreement, unless the custodial parent clearly established that the custodial parent provided, in fact, more for the support of the child during the calendar year than the noncustodial parent. Under section 152 (e) (2) (B) and this subparagraph, if the noncustodial parent established that the noncustodial parent has provided $1,200 or more for support of the child, then the custodial parent has the burden of establishing by a clear preponderance of the evidence that the custodial parent has provided more for the support of the child than has been established by the noncustodial parent in order to be treated as having provided over half of the support of the child. See paragraph (e) of this section with regard to notification and submission of itemized statements.

* * * * *

(f) *Illustration of principles.* * * *

Example (7). N, O, and P are the children of divorced parents Q and R, both calendar year taxpayers. During calendar year 1976, the children received over half their support from Q and R. Q, who has custody of the three children for the entire year 1976, provided $800 for the support of each of the three children. R, the noncustodial parent, provided $2,700 during 1976 for the combined support of the three children under the terms of the decree of divorce. So, for calendar year 1976, although R, the noncustodial parent, did not provide support in the amount $1,200 per child under paragraph (d)(3) of this section, R, the noncustodial parent, is treated as having provided more than half the support of each child during 1976, since R provided more than $1,200 for the combined support of all the children and Q did not provide more for the support of either N, O, or P ($800 per child) during 1976 than R provided during 1976 ($900 per child).

Example (8). Assume the same facts that occurred in 1976 in example 7 also occurred in 1977. For 1977 R does not satisfy the $1,200 support test under paragraph (d)(3) of this section because he has not provided $1,200 support for each individual child N, O, or P for calendar year 1977. Therefore, R, the noncustodial parent, is not treated as having provided more than half the support of the children for calendar year 1977.

Example (9). A, B, and C, the children of divorced parents M and N, both calendar year taxpayers, receive all of their support, $5,900, from their parents during the calendar year 1979. M has custody of A, B, and C and provides $2,700 for their collective support during 1979. Pursuant to the terms of the decree of divorce N provided $1,200 for the support of A, $1,000 for the support of B, and $1,000 for the support of C. Since N has provided $1,200 or more for the support of A, and M has provided $900 ($2,700 ÷ 3) for the support of A during 1979, N is treated as having provided more than half the support for A during 1979. However, since N has not provided $1,200 or more for the support of either B or C, N, the noncustodial parent, is not treated as having provided more than half the support of B or C during 1979.

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 79-6220 Filed 3-1-79; 8:45 am]

[4810-42-M]

Internal Revenue Service

[26 CFR Parts 20 and 25]

[EE-25-78]

EMPLOYEE RETIREMENT BENEFITS EXCLUDED FROM GROSS ESTATE AND FROM TAXABLE GIFTS

Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the estate and gift tax treatment of amounts payable under qualified employee pension, profit-sharing stock bonus and annuity plans and under individual retirement plans. Changes to the applicable tax law were made by the Tax Reform Act of 1976 and the Revenue Act of 1978. The regulations would provide the public with guidance needed to comply with those Acts and would primarily affect the estates of decedents with respect to whom amounts are payable under such plans.

DATES: Written comments and requests for a public hearing must be delivered or mailed by May 1, 1979. The amendments are generally proposed to be effective for decedents dying and gifts made after December 31, 1976.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T:EE-25-78, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Richard L. Johnson of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T:EE-25-78, 202-556-6358 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Estate Tax Regulations (26 CFR Part 20) and the Gift Tax Regulations (26 CFR Part 25) under sections 2039 and 2517 of the Internal Revenue Code of 1954. The amendments are proposed to conform the regulations to section 2009(c) of the Tax Reform Act of 1976 (90 Stat. 1894) and section 142 of the Revenue Act of 1978 (92 Stat. 2796), and are to be issued under the authority contained in sections 2039 (f)(2) and 7805 of the Internal Revenue Code of 1954 (92 Stat. 2796, 68A Stat. 917; 26 U.S.C. 2039 (f)(2), 7805).

Individual Retirement Plans

The Tax Reform Act of 1976 amended prior law generally to exclude from the value of a decedent's gross estate the value of an annuity receivable by a beneficiary under an individual retirement account, annuity or bond (an "individual retirement plan"). The exclusion applies only to the portion of the value of the annuity that is attributable to contributions which were allowable as a deduction for income tax purposes or were rollover contributions.

In the case of an individual retirement plan, the estate tax exclusion applies only to amounts receivable as an annuity. For this purpose, a distribution from an individual retirement plan to a beneficiary does not have to be in the form of a typical commercial annuity contract to qualify for the exclusion. The exclusion is available if the plan provides for a series of substantially equal periodic payments to be made to a beneficiary for the beneficiary's life or over a period ending at least 36 months after the date of the decedent's death.

Keogh Plans

Under the Tax Reform Act of 1976, contributions made on behalf of a decedent to a qualified plan while the decedent was self-employed are, to the extent allowable as a tax deduction, treated the same as contributions made by an employer. As a result, benefits payable on account of the death of a self-employed individual under an "H.R. 10" or "Keogh" plan are eligible for exemption from estate taxation, unless the benefits are attributable to plan contributions that were not allowable as a deduction.

Lump Sum Distributions

In the case of a qualified pension, profit-sharing, stock bonus or annuity plan, under the Tax Reform Act of 1976 the estate tax exclusion for decedents dying in 1977 and 1978 is limited to an annuity or payment other than a lump sum distribution.

Under the Revenue Act of 1978, for decedents dying after 1978, the estate tax exclusion applies even if the payment is a lump sum distribution, provided that the beneficiary foregoes the favorable income tax treatment afforded lump sum distributions. If the lump sum distribution is taxable to the recipient as long-term capital gain or under the 10-year averaging provisions of Code section 402, the distribution is included in the gross estate.

Gift Tax Exclusion

In general, the exercise or nonexercise by an employee of an election whereby an annuity or other payment becomes payable to a beneficiary after the employee's death is not regarded as a transfer subject to the gift tax if two conditions are satisfied. First, the annuity or other payment must be provided under specified employee retirement plans, including qualified pension, profit-sharing, stock bonus and annuity plans. Secondly, the exclusion applies only to that part of the value of the annuity or other payment attributable to employer contributions.

Under the Tax Reform Act of 1976, this gift tax exclusion is extended to cover an annuity or other payment provided under an individual retirement plan. In addition, contributions or payments made under an "H.R. 10" or "Keogh" plan on behalf of a self-employed individual are, to the extent allowable as an income tax deduction, treated as made by an employer so that the gift tax exclusion is available.

Comments and Requests for Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations was Richard L. Johnson of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service participated in developing the regulations, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Parts 20 and 25 are as follows:

Estate Tax Regulations

[26 CFR PART 20]

PAR. 1. Section 20.2039-2(a) is revised to read as follows:

§ 20.2039-2 Annuities under "qualified plans" and section 403(b) annuity contracts.

(a) *Section 2039(c) exclusion.* In general, in the case of a decedent dying after December 31, 1953, the value of an annuity or other payment receivable under a plan or annuity contract described in pargraph (b) of this section is excluded from the decedent's

gross estate to the extent provided in paragraph (c) of this section. In the case of a plan described in paragraph (b)(1) or (2) of this section (a "qualified plan"), the exclusion is subject to the limitation decribed in § 20.2039-3 (relating to lump sum distributions paid with respect to a decedent dying after December 31, 1976, and before January 1, 1979) or § 20.2039-4 (relating to lump sum distributions paid with respect to a decedent dying after December 31, 1978).

PAR. 2. Section 20.2039-2(b) is revised by deleting "or" at the end of subparagraph (3), by deleting the period at the end of subparagraph (4) and inserting in lieu thereof "; or", and by adding a new subparagraph (5) to read as follows:

§ 20.2039-2 Annuities under "qualified plans" and section 403(b) annuity contracts.

* * * * *

(b) *Plans and annuity contracts to which section 2039(c) applies.* * * *

(5) In the case of a decedent dying after December 31, 1962, a bond purchase plan described in section 405.

* * * * *

PAR. 3. Section 20.2039-2(c)(1) is revised to read as follows:

§ 20.2039-2 Annuities under "qualified plans" and section 403(b) annuity contracts.

* * * * *

(c) *Amounts excludable from the gross estate.* (1) The amount to be excluded from a decedent's gross estate under section 2039(c) is an amount which bears the same ratio to the value at the decedent's death of an annuity or other payment receivable by the beneficiary as the employer's contribution (or a contribution made on the employer's behalf) on the employee's account to the plan or towards the purchase of the annuity contract bears to the total contributions on the employee's account to the plan or towards the purchase of the annuity contract. In applying this ratio—

(i) Payments or contributions made by or on behalf of the employer towards the purchase of an annuity contract described in paragraph (b)(3) of this section are considered to include only such payments or contributions as are, or were, excludable from the employee's gross income under section 403(b).

(ii) In the case of a decedent dying before January 1, 1977, payments or contributions made under a plan described in paragraph (b)(1), (2) or (5) of this section on behalf of the decedent while the decedent was self-employed within the meaning of section 401(c)(1) with respect to the plan are considered payments or contributions made by the decedent and not by the employer.

(iii) In the case of a decedent dying after December 31, 1976, however, payments or contributions made under a plan described in paragraph (b)(1), (2) or (5) of this section on behalf of the decedent while the decedent was self-employed within the meaning of section 401(c)(1) with respect to the plan are considered payments or contributions made by the employer to the extent the payments or contributions are, or were, deductible under section 404 or 405(c). Contributions or payments attributable to that period which are not, or were not, so deductible are considered made by the decedent.

(iv) In the case of a plan described in paragraph (b)(1) or (2) of this section, a rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3)(A)(ii) or 409(b)(3)(C) is considered an amount contributed by the employer.

(v) In the case of an annuity contract described in paragraph (b)(3) of this section, a rollover contribution described in section 403(b)(8) is considered an amount contributed by the employer.

(vi) In the case of a plan described in paragraph (b)(1), (2) or (5) of this section, an amount includable in the gross income of an employee under section 1379(b) (relating to shareholder-employee beneficiaries under certain qualified plans) is considered an amount paid or contributed by the decedent.

(vii) Amounts payable under paragraph (b)(4) of this section are attributable to payments or contributions made by the decedent only to the extent of amounts deposited by the decedent pursuant to section 1438 or 1452(d) of Title 10 of the United States Code.

(viii) The value at the decedent's death of the annuity or other payment is determined under the rules of §§ 20.2031-1 and 20.2031-7 through 20.2031-10.

PAR. 4. The following new sections are added in the appropriate place:

§ 20.2039-3 Lump sum distributions under "qualified plans"; decedents dying after December 31, 1976, and before January 1, 1979.

(a) *Limitation of section 2039(c) exclusion.* This section applies in the case of a decedent dying after December 31, 1976, and before January 1, 1979. No portion of a lump sum distribution paid with respect to the decedent under a plan described in § 20.2039-2(b) (1) or (2) (a "qualified plan") is excludable from the decedent's gross estate under § 20.2039-2.

(b) *"Lump sum distribution" defined.* For purposes of this section the term "lump sum distribution" means a lump sum distribution defined in section 402(e)(4)(A) that satisfies the requirements of section 402(e)(4)(C), relating to the aggregation of certain trusts and plans. The distribution of an annuity contract is not a lump sum distribution for purposes of this section. A distribution is a lump sum distribution for purposes of this section without regard to the election described in section 402(e)(4)(B).

(c) *Amounts payable as a lump sum distribution.* If on the date the estate tax return is filed, an amount under a qualified plan is payable with respect to the decedent as a lump sum distribution (whether at the election of a beneficiary or otherwise), for purposes of this section the amount is deemed paid as a lump sum distribution no later than on such date. Accordingly, no portion of the amount payable under the plan is excludable from the value of the decedent's gross estate under § 20.2039-2. If, however, the amount payable as a lump sum distribution is not, in fact, thereafter paid as a lump sum distribution, there shall be allowed a credit or refund of any tax paid which is attributable to treating such amount as a lump sum distribution under his paragraph. Any claim for credit or refund filed under this paragraph must be filed within the time prescribed by section 6511, and must provide satisfactory evidence that the amount originally payable as a lump sum distribution is no longer payable in such form.

(d) *Filing date.* For purposes of paragraph (c) of this section, "the date the estate tax return is filed" means the earlier of—

(1) The date the estate tax return is actually filed, or

(2) The date nine months after the decedent's death, plus any extension of time for filing the estate tax return granted under section 6081.

§ 20.2039-4 Lump sum distributions from "qualified plans"; decedents dying after December 31, 1978.

(a) *Limitation on section 2039(c) exclusion.* This section applies in the case of a decedent dying after December 31, 1978. No portion of a lump sum distribution paid or payable with respect to a decedent under a plan described in § 20.2039-2(b) (1) or (2) (a "qualified plan") is excluded from the value of the decedent's gross estate under § 20.2039-2, unless the recipient of the distribution makes the election described in paragraph (c) of this section. For purposes of this section, an amount is payable as a lump sum distribution under a plan if, on the date

the estate tax return is filed (as determined under § 20.2039-3(d)), it is payable as a lump sum distribution at the election of the recipient or otherwise.

(b) *"Lump sum distribution" defined.* For purposes of this section the term "lump sum distribution" means a lump sum distribution defined in section 402(e)(4)(A) that satisfied the requirements of section 402(e)(4)(C), relating to the aggregation of certain trusts and plans. The distribution of an annuity contract is not a lump sum distribution for purposes of this section. A distribution is a lump sum distribution for purposes of this section without regard to the election described in section 402(e)(4)(B).

(c) *Recipient's section 402(a)/403(a) taxation election.* No portion of a lump sum distribution paid or payable with respect to a decedent under a qualified plan is excluded from the decedent's gross estate unless the recipient of the distribution irrevocably elects to treat the distribution as—

(1) Taxable under section 402(a) without regard to section 402(a)(2) (in the case of a distribution from a qualified plan described in § 20.2039-2(b)(1)), or

(2) Taxable under section 403(a) (in the case of a distribution under a qualified annuity contract described in § 20.2039-2(b)(2)).

(d) *Method of election.* The recipient of a lump sum distribution shall make the section 402(a)/403(a) taxation election by determining the income tax liability on the income tax return (or amended return) for the taxable year of the distribution in a manner consistent with paragraph (c) (1) or (2) of this section.

No portion of the value of a lump sum distribution may be excluded from the decedent's gross estate under § 20.2039-2 until evidence that the recipient has made the section 402(a)/403(a) taxation election is submitted to the district director.

(e) *Lump sum distribution to multiple recipients.* In the case of a lump sum distribution paid or payable under a qualified plan with respect to the decedent to more than one recipient, the exclusion under § 20.2039-2 applies to so much of the distribution as is paid or payable to a recipient who makes the section 402(a)/403(a) taxation election.

(f) *Distributions of annuity contracts included in multiple distributions.* Notwithstanding that a recipient makes the section 402(a)/403(a) taxation election with respect to a lump sum distribution that includes the distribution of an annuity contract, the distribution of the annuity contract is to be taken into account by the recipient for purposes of the multiple distribution rules under section 402(e).

(g) *Surviving spouse's rollover contribution under section 402(a)(7).* [Reserved]

§ 20.2039-5 Annuities under individual retirement plans.

(a) *Section 2039(e) exclusion—(1) In general.* In the case of a decedent dying after December 31, 1976, section 2039 (e) excludes from the decedent's gross estate, to the extent provided in paragraph (c) of this section, the value of a "qualifying annuity" receivable by a beneficiary under an individual retirement plan. The term "individual retirement plan" means—

(i) An individual retirement account described in section 408(a),

(ii) An individual retirement annuity described in section 408(b), or

(iii) A retirement bond described in section 409(a).

(2) *Limitations.* (i) Section 2039(e) applies only with respect to the gross estate of a decedent on whose behalf the individual retirement plan was established. Accordingly, section 2039(e) does not apply with respect to the estate of a decedent who was only a beneficiary under the plan.

(ii) Section 2039(e) does not apply to an annuity receivable by or for the benefit of the decedent's estate. For the meaning of the term "receivable by or for the benefit of the decedent's estate," see § 20.2042-1(b).

(b) *Qualifying annuity.* For purposes of this section, the term "qualifying annuity" means an annuity contract or other arrangement providing for a series of substantially equal periodic payments to be made to a beneficiary for the beneficiary's life or over a period ending at least 36 months after the decedent's death. The term "other arrangement" includes any arrangement arising by reason of the decedent's participation in the program providing the individual retirement plan.

Payments shall be considered "periodic" if under the contract or arrangement payments are to be made to the beneficiary at regular intervals. If the contract or arrangement provides optional payment provisions, not all of which provide for periodic payments, payments shall be considered periodic only if an option providing periodic payments is elected not later than the date the estate tax return is filed (as determined under § 20.2039-3(d)). Payments shall be considered "substantially equal" even though the amounts receivable by the beneficiary may vary. Payments shall not be considered substantially equal, however, if the amounts payable to the beneficiary during any 12-month period may exceed 40% of the total amount payable to the beneficiary, determined as of the date of the decedent's death.

(c) *Amount excludable from gross estate—(1) In general.* Except as described in subparagraphs (2) and (3) of this paragraph, the amount excluded from the value of the decedent's gross estate under section 2039(e) is the entire value of the qualifying annuity payable under the individual retirement plan.

(2) *Excess contribution.* In any case in which there exists, on the date of the decedent's death, an excess contribution (as defined in section 4973(b)) with respect to the individual retirement plan, the amount excluded from the value of the decedent's gross estate is determined under the following formula:

$$E = A - A\left(\frac{X}{C - R}\right)$$

where:

E=the amount excluded from the decedent's gross estate under section 2039(e),

A=the value of the qualifying annuity at the decedent's death (as determined under §§ 20.2031-1 and 20.2031-7 through 20.2031—10),

X=the amount which is an excess contribution at the decedent's death (as determined under section 4973(b)),

C=the total amount contributed by or on behalf of the decedent to the individual retirement plan, and

R=the total of amounts paid or distributed from the individual retirement plan before the death of the decedent which were either includable in the gross income of the recipient under section 408(d)(1) and represented the payment or distribution of an excess contribution, or were payments or distributions described in section 408(d)(4) (relating to a returned excess contribution).

(3) *Certain section 403(b)(8) rollover contributions.* This subparagraph (3) applies if the decedent made a rollover contribution to the individual retirement plan under section 403(b)(8), and the contribution was attributable to a distribution under an annuity contract other than an annuity contract described in § 20.2039-2(b)(3). If such a rollover contribution was the only contribution made to the plan, no part of the value of the qualifying annuity payable under the plan is excluded from the decedent's gross estate under section 2039(e). If a contribution other than such a rollover contribution was made to the plan, the amount excluded from the decedent's gross estate is determined under the formula described in subparagraph (2) of this paragraph, except that, for purposes of that formula—

X=the amount which is an excess contribution at the decedent's death (as determined under section 4973(b)), plus the amount which was a rollover contribution under section 403(b)(8) attributable to a distribution under an annuity contract not described in § 20.2039-2(b) (3).

(d) *Surviving spouse's rollover contribution under section 402(a)(7).*

[Reserved]

(e) *Example.* The provisions of this section may be illustrated by the following example:

A established an individual retirement account described in section 408 (a) on January 1, 1976, when A was age 65. A's only contribution to the account was a rollover contribution described in section 402(a)(5)(B)(i). The part of the trust agreement governing distributions from the account provided that A could at any time elect to have his interest in the account distributed to him in one of following methods:

(1) A single sum payment of the account;

(2) Equal or substantially equally semi-annual payments over A's lifetime; or

(3) Equal or substantially equal semi-annual payments over the joint lives of A and A's spouse.

The trust agreement further provided that although semi-annual payments had commenced under option (2) or (3), A (or A's desiginated beneficiary or surviving spouse) could, by written notice to the trustee, receive all or a part of the balance remaining in the account.

A elected option (3) and the first semi-annual payment was made to A on July 1, 1976. On December 20, 1978, A died survived by A's spouse. The amount remaining in the account will be excluded from the value of A's gross estate under section 2039(e) if A's surviving spouse, as of the date the estate tax return is filed, no longer may elect under the trust agreement to receive without limitation all or part of the balance remaining in the account, and the balance is otherwise payable in the form of a qualifying annuity.

GIFT TAX REGULATIONS

[26 CFR PART 25]

PAR. 5. Section 25.2517-1 is amended by revising paragraph (b)(1) (iii) and (iv), by adding a new paragraph (b)(1)(v) and a new paragraph (b)(1)(vi) by revising the third sentence in paragraph (b)(2), by revising so much of paragraph (c)(1) as precedes Example (1), and by adding a new paragraph (d). These revised and added provisions read as follows:

§ 25.2517-1 Employees' annuities.

* * * * *

(b) *Annuities or other payments to which section 2517 applies.* (1) * * *

(iii) A retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 170(b)(1)(A) (ii) or (vi) or which is a religious organization (other than a trust) and is exempt from tax under section 501(a);

(iv) With respect to calendar years after 1965, an annuity under chapter 73 of title 10 of the United States Code (10 U.S.C. 1431, et seq.);

(v) With respect to transfers made after December 31, 1976, an individual retirement account described in section 408(a), an individual retirement annuity described in section 408(b), or a retirement bond described in section 409(a) (an "individual retirement plan"); or

(vi) With respect to transfers made after December 31, 1962, a bond purchase plan described in section 405.

(2) * * * For purposes of this section, the term "employee" includes a former employee, and in the case of an individual retirement plan described in subparagraph (1)(v) of this paragraph, means the individual for whose benefit the plan was established or purchased. * * *

(c) *Limitation on amount excludable from gift.* (1) In the case of a plan or annuity contract described in paragraph (b)(1) (i), (ii), (iii) or (vi) of this section, if an annuity or other payment payable thereunder is attributable to payments or contributions made by both the employee and the employer, the exclusion is limited to that proportion of the value on the date of the gift (see paragraph (a)(1) of this section) of the annuity or other payment which the employer's contribution (or a contribution made on the employer's behalf) to the plan on the employee's account bears to the total contributions to the plan on the employee's account. In applying this ratio—

(i) Payments or contributions made by the employer toward the purchase of an annuity contract described in paragraph (b)(1)(iii) of this section are considered to be employee contributions to the extent that the contributions are not, or were not, excludable from the employee's gross income under section 403(b).

(ii) For transfers made before January 1, 1977, payments or contributions made to a plan described in paragraph (b)(1) (i), (ii) or (vi) of this section on behalf of an individual while the individual was self-employed within the meaning of section 401(c)(1) with respect to the plan are considered payments or contributions made by the employee.

(iii) For transfers made after December 31, 1976, however, payments or contributions made under a plan described in paragraph (b)(1) (i), (ii) or (vi) of this section on behalf of such a self-employed individual are considered employer contributions to the extent that they are, or were, deductible under section 404 or 405(c), and are considered employee contributions to the extent that they are not, or were not, so deductible.

(iv) In the case of a plan described in paragraph (b)(1) (i) or (ii) of this section, a rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3)(A)(ii) or 409(b)(3)(C) is considered an amount contributed by the employer.

(v) In the case of an annuity contract described in paragraph (b)(1)(iii) of this section, a rollover contribution described in section 403(b)(8) is considered an amount contributed by the employer.

(vi) In the case of a plan described in paragraph (b)(1) (i), (iii) or (vi) of this section, an amount includable in the gross income of an employee under section 1379(b) (relating to shareholder-beneficiaries under certain plans) is considered an amount paid or contributed by the employee.

(vii) In the case of an annuity described in paragraph (b)(1)(iv) of this section, amounts paid or contributed by the employee include only amounts deposited by the employee under section 1438 or 1452(d) of Title 10 of the United States Code.

The application of this paragraph may be illustrated by the following examples, none of which involves employees within the meaning of section 401(c)(1):

* * * * *

(d) *Exemption of annuity interest created by community property laws—*(1) *In general.* An employee's transfer of benefits attributable to either—

(i) Contributions or payments made by an employer or former employer on the employee's behalf to a trust, annuity contract or bond purchase plan described in paragraph (b)(1)(i), (ii), (iii) or (vi) of this section, or

(ii) Contributions or payments made by the employee to an individual retirement plan described in paragraph (b)(1)(v) of this section,

will not be considered a transfer by the employee's spouse to the extent the spouse's interest in the transferred benefits is also attributable to such contributions or payments and arises solely by reason of the spouse's interest in community income under the community property laws of a State.

(2) *Limitation.* The exemption described in subparagraph (1) of this paragraph does not apply in the case of an employee's transfer of benefits payable under a trust, annuity contract or bond purchase plan described in paragraph (b)(1)(i), (ii), (iii) or (vi) of this section to the extent such benefits are attributable to contributions or payments made by the employee. For purposes of the limitation described in this subparagraph—

(i) Employer contributions toward the purchase of an annuity contract

described in paragraph (b)(1)(iii) of this section, to the extent not excludable from the employee's gross income under section 403(b), are considered employee contributions.

(ii) In the case of a plan described in paragraph (b)(1)(i), (ii) or (vi) of this section, contributions or payments made on behalf of an individual while the individual was self-employed within the meaning of section 401(c)(1) with respect to the plan are considered employer contributions to the extent they are, or were, deductible under section 404 or 405(c) and are considered employee contributions to the extent they are not, or were not, so deductible.

(iii) In the case of a plan described in paragraph (b)(1)(i) or (ii) of this section, a rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3)(A)(ii) or 409(b)(3)(C) is considered an employer contribution.

(iv) In the case of an annuity contract described in paragraph (b)(1)(iii) of this section, a rollover contribution described in section 403(b)(8) is considered an employer contribution.

(3) *Effective date.* Section 2517(c) and this paragraph apply to transfers made after December 31, 1976.

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 79-6391 Filed 3-7-79; 8:45 am]

[4810-31-M]

Bureau of Alcohol, Tobacco and Firearms

[27 CFR Parts 47, 178 and 179]

[Notice Nos. 321 and 3221

FIREARMS REGULATIONS

Withdrawal of Notices of Proposed Rulemaking

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Withdrawal of Notices of Proposed Rulemaking.

SUMMARY: The purpose of this document is to announce that FEDERAL REGISTER Notices 78-321 and 78-322 (43 FR 11800 and 43 FR 11803, respectively) in which ATF published proposed amendments to 27 CFR Parts 47, 178 and 179 regarding firearms are withdrawn. Those notices covered a wide variety of subject matters. Those generating the most comments would have required quarterly reports to be filed by licensees concerning firearms manufactured and disposed of, and that each firearm have a unique serial number. These proposals are being withdrawn and ATF does not intend to consider them again in the foreseeable future. The other proposals being withdrawn will continue to be reviewed and ATF will consider whether some or all of them should be reproposed in the same or modified form. The Department particularly wants the newly appointed Director of ATF to review these various proposals.

SUPPLEMENTARY INFORMATION

NOTICE No. 321

Quarterly Reports. The Bureau originally proposed a requirement that all licensees submit quarterly reports of all firearms dispositions between licensees, i.e., manufacturers, wholesalers and dealers; quarterly reports by retailers of firearms sold, without identifying the names or addresses of non-licensee purchasers; and quarterly reports of firearms manufactured. These regulations were designed to provide the Bureau and other law enforcement agencies with information which would make it possible to trace more efficiently firearms used in crimes as well as assist ATF in identifying those licensees who may be the source of weapons used in crimes.

ATF received approximately 345,000 comments on these proposals. While support was received from various law enforcement and other organizations, the overwhelming number of comments were negative. In addition, the Congress indicated strong opposition to these regulations and voted to prohibit the use of appropriated funds for their implementation. For these reasons the regulations are being withdrawn.

Unique Serial Number. The Bureau originally proposed a system of unique serial numbers for all firearms imported and manufactured. After reviewing all the comments, the Bureau believes the system proposed would require substantial modification. Questions were raised as to whether the benefits of the system as proposed justified the costs involved. In addition, an important benefit of this proposal was simplification of the processing of the quarterly reports which are being withdrawn. Also, Congressional opposition to this proposal was reflected in the prohibitory language referred to above. For all these reasons, the Bureau is withdrawing these proposals.

Theft Reports. The Bureau originally proposed that all licensees be required to report thefts of firearms. There were substantially fewer negative comments to this proposal. ATF will continue to study the need for this regulation as well as develop more precise estimates for the cost to ATF for using the data from the reports.

NOTICE No. 322

This notice contained a variety of proposals including the following:

1. Importers and certain military members of the Armed Forces would be required to submit a revised form for authorization to import or bring firearms into the United States;

2. Owners of certain National Firearms Act (NFA) firearms would be required to submit a designated form for authorization to transport their NFA firearms in interstate or foreign commerce instead of submitting letters requests;

3. A Federal firearms licensee would be required to report by telephone information on firearms receipts and disposition when requested by ATF;

4. Dealers would be allowed to return firearms for repair or replacement to the manufacturer or importer without having to obtain a copy of the manufacturer's or importer's license.

The Bureau will consider whether the various proposed changes in this notice should be reproposed in a future notice.

Signed: February 26, 1979.

G. R. DICKERSON,
Director, Bureau of Alcohol, Tobacco and Firearms.

Approved: February 26, 1979.

Richard J. Davis,
Assistant Secretary
(Enforcement and Operations).

[FR Doc. 79-6372 Filed 3-1-79; 8:45 am]

[4310-05-M]

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[30 CFR Chapter VII]

SURFACE COAL MINING AND RECLAMATION OPERATIONS PERMANENT REGULATORY PROGRAM

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior, Washington, D.C. 20240.

ACTION: Petition to Amend 30 CFR Part 705 Concerning Restrictions of Financial Interests.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement seeks public comment on a petition for certain amendments to regulations found in 30 CFR Part 705 relating to financial interest restrictions for employees of State surface mining regulatory authorities. The proposed amendments are to alter the definitions of "employee" and "indirect financial interest."

DATES: Comments must be received by April 2, 1979, at the addresses below by no later than 5 P.M.

ADDRESSES: Written comments must be mailed to: Office of Surface Mining, U.S. Department of the Interior, P.O. Box 7267, Benjamin Franklin Station, Washington, D.C. 20044; or be

hand delivered to: Office of Surface Mining, Room 120, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, N.W. Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Carl C. Close, Assistant Director for State and Federal Programs, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240 (202) 343-4225.

SUPPLEMENTARY INFORMATION: On October 20, 1977, OSM published rules to implement the Restrictions of Financial Interests for State and Federal Employees (42 FR 56060). A petition to amend Part 705 has been submitted to OSM by the National Wildlife Federation, Colorado Open Space Council, Council of Southern Mountains, Save Our Cumberland Mountains and Save Our Mountains, Inc. (A copy of this petition is appended to this notice as Appendix A). The petition published herein seeks to amend certain definitions set forth in 705.5 to 30 CFR. The basic position of petitioners is that granting exemptions to members of boards or commissioners who represent multiple interests is contrary to Congressional intent, as stated in the Surface Mining Control and Reclamation Act of 1977, (Pub. L. 95-87) and circumvents the purpose of Section 517(g) of the Act. Citing the same reasons, petitioners are seeking to have the definition of a prohibited "indirect interest" broadened. OSM seeks public comment as to whether the changes requested in this petition should be granted in whole or part.

PUBLIC COMMENT PERIOD: The comment period on the petition will extend until April 2, 1979. All written comments must be received at the addresses given above by 5 P.M. on Comments received after that hour will not be considered or included in the administrative record on this petition. The Office cannot insure that written comments received or delivered during the comment period to any other locations than specified above will be considered and included in the administrative record on this petition.

AVAILABILITY OF COPIES: In addition to its publication here as Appendix A, copies of the petition and copies of 30 CFR Part 705 are available for inspection and may be obtained at the following offices:

OSM Headquarters, Department of the Interior, South Building Room 120, 1951 Constitution Avenue, N.W., Washington, D.C. 20240 (202) 343-4728.

OSM Region I, First Floor, Thomas Hill Building, 950 Kanawha Boulevard, East Charleston, W.VA. 25301; (304) 342-8125.

OSM Region II, 530 Gay Street, S.W., Suite 500, Knoxville, Tenn. 37902; (615) 637-8060.

OSM Region III, Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, IN 46204; (317) 269-2609.

OSM Region IV, 818 Grand Avenue, Scarritt Building, 5th Floor Kansas City, Missouri 64106; 913-758-2193.

OSM Region V, Post Office Building, 1823 Stout Street, Denver, CO; 80205, 303-837-5511.

Dated: February 22, 1979.

WALTER N. HEINE,
Director, Office of Surface Mining Reclamation and Enforcement.

APPENDIX A

PETITION FOR RULEMAKING, OFFICE OF SURFACE MINING

Submitted by National Wildlife Federation, Colorado Open Space Council, Council of Southern Mountains, Save Our Cumberland Mountains and Save Our Mountains, Inc.

December 15, 1978

Pursuant to the Administrative Procedure Act, 5 U.S.C. § 553(e), the Surface Mining Act of 1977 (hereinafter, the Act), 30 U.S.C. §§ 1211(c)(2) and (g), and regulations of the Office of Surface Mining (hereinafter, OSM), 30 C.F.R. § 700.12, National Wildlife Federation, Colorado Open Space Council, Council of Southern Mountains, Save Our Cumberland Mountains and Save Our Mountains, Inc. (hereinafter, Petitioners) petition the Director, OSM, for certain amendments to regulations found at 30 C.F.R § 705 related to conflicts of interest among employees of state surface mining regulatory authorities. The proposed amendments aim to conform that provision of OSM's regulations defining "employee" to the clear dictate of the Surface Mining Act, 30 U.S.C. § 1267(g), and to alter the definition of "indirect financial interest" to reflect judicial precedent interpreting that phrase. Petitioners seek these changes to prevent evasion of the Act's conflict of interest provisions now possible under the current regulatory language.

Petitioner National Wildlife Federation, the nation's largest private conservation association, is committed to the wise and productive management of the nation's natural resources. NWF has a demonstrated and continuing interest in the proper implementation of the Surface Mining Act of 1977.

Petitioner Colorado Open Space Council is a non-profit public membership corporation comprised of twenty-seven Colorado organizations active in the fields of environmental protection, recreation and public health. COSC has been intensively involved in mining issues in Colorado since the 1960's.

Petitioner Council of Southern Mountains is a Virginia-based community-oriented, non-profit organization. The Council's membership includes active and retired or disabled miners, as well as citizens who are affected by the suface mining of coal in central Appalachia.

Petitioner Save Our Cumberland Mountains is a state-wide citizens organization dedicated to the effective control and regulation of surface mining in Tennessee.

Petitioner Save Our Mountains, Inc. is a non-profit environmental organization concerned with the effects of surface mining in the State of West Virginia and the proper enforcement of state and federal surface mining statutes.

I. *The Proposed Amendments*

Petitioners request promulgation of the following changes in OSM's conflict of interest regulations, 30 C.F.R. § 705:

(1) Amend the definition of "employees," 30 CFR § 705.5, to eliminate the exception created there for "members of advisory boards or commissions established in accordance with state law or regulations to represent multiple interests. . . ."

(2) Amend the definition of "indirect financial interest" as follows:

Indirect financial interest means:

(1) Ownership or part-ownership of or employment by a firm or business that is a subsidiary or affiliate of a coal mining operation or which controls, is controlled by, or is under common control with, a coal mining operation;

(2) Ownership or part ownership of, or employment by, a firm or business that derives a significant portion of its income (more than 10%) from contracts with firms or businesses involved in coal mining operations;

(3) Benefits reaped by the employee of the direct or indirect interests (as described in (1) and (2) above or as described for direct financial interests) held by his or her spouse, minor child, or other relatives, including in-laws, residing in the employee's home.

(4) For purposes of this provision, ownership of shares in mutual-funds or other similar diversified investment funds that have interests in coal or coal-related firms does not contitute a prohibited indirect interest.

II. *Reasons Why This Petition Should Be Granted*

A. Elimination of Definitional Exception. Under current OSM regulations, the conflict of interest prohibitions of the Surface Mining Act cover all state regulatory authority employees and all commission or board members "perform[ing] decisionmaking functions for the State Regulatory Authority, *except* if such commissions or boards were established in accordance with state law or regulations to represent multiple interests. . . ." 30 C.F.R. § 705.5. This exception is not countenanced by the Surface Mining Act and has resulted in the perpetuation of state practices contrary to that law's clear dictate.

The terms of the Act are unequivocal:

No employee of the state regulatory authority performing any function or duty under this Act shall have a direct or indirect interest in any underground or surface coal mining operation. [30 U.S.C. § 1267(g).]

In enacting this broad prophylactic provision of the Act, Congress clearly intended to guard against the possibility that regulatory decisions—such as the decision to grant or deny a permit or the decision to issue enforcement notices or orders—would be made by individuals attached to the coal mining industry or who might benefit financially, even if indirectly, from any coal mining operation. As first proposed in 1975, the statutory provision would have permitted employees to own up to 100 shares of common-

ly traded coal company stock,[1] yet by the time the Act became law, even that limited exception had been eliminated. Since Congress itself refused to grant any exceptions to the Act's absolute prohibition, it surely did not intend that OSM should do so. Yet, OSM has done exactly that.

OSM's stated justification for exempting "multi-interest boards" is "to avoid dismembering boards or commissions composed in such a manner as to represent divergent interests." 42 FR 56061 (Oct. 20, 1977). While petitioners can understand OSM's concern for existing state structures, the simple fact is that Congress anticipated—indeed, intended—that boards or commissions whose members' "divergent interests" are directly or indirectly related to coal mining would be "dismembered." Particularly since states will soon be amending their laws and regulations to assume responsibility under the permanent surface mining program, OSM should now amend its own regulations to insure full compliance with the Act by state agencies.

Petitioners' concern with these regulations is not an academic one. The failure of OSM to promulgate regulations consistent with the Act has resulted in the perpetuation of relationships between state decisionmakers and coal operators that Congress meant to proscribe. In West Virginia, the Reclamation Board of Review hears appeals from persons aggrieved by orders of the Director of the Department of Natural Resources, including orders denying coal mining permits or enforcing mining regulations.[2] By statute, one of the members of the Board is to be a "representative of coal surface mine operators." In addition, at the present time, petitioners are informed, and believe, two of the remaining four Board members possess indirect interests in coal mining operations by association with consulting firms whose clients include companies engaged in surface mining in West Virginia.

In Tennessee, two members of the Reclamation Review Board are, by statute, "representatives of the mining industries."[3] At the current time one of the positions is filled by the owner of a coal operation and the other by the general manager of a landholding corporation that leases substantial tracts of land for coal operations.

In Colorado, the Mined Land Reclamation Board, which has sole responsiblity for the issuance of mining permits and for all enforcement action, also contains members with significant ties to firms engaged in coal operations.[4] Of the seven members on the Board, one is legal counsel to a major Colorado coal-mining corporation, while another is a reclamation specialist for a hard-rock mining firm associated with one of the nation's largest coal companies.

It was precisely such connections between the state authorities and the coal operations they regulated that Congress, for obvious reasons, meant to prohibit under the Act. *See* House Debates 121 Cong. Rec. 6786-6788 (March 17, 1975); 121 Cong. Rec. 7046 (March 18, 1975). The exception now contained in OSM's rules that permits the continuation of such proscribed financial connections has no basis in the Act and should be stricken.

B. *Definition of Indirect Interest.* Congressional concern for the impartiality of state regulatory authority action reached beyond those cases where the authority's decision would be made by an individual who had a direct ownership or employment interest in a coal operation. Congress recognized that other interests could also taint the process. Obvious examples are the consulting engineer who prepares permit applications, the attorney who represents coal operators in court, the truck dealer who sells equipment to coal operators, or the employee of a firm that, although ostensibly a separate entity, in fact controls or is controlled by a coal company. While none of these persons may actually own a coal operation or be a salaried employee of a coal company, their stake in the continuing prosperity of surface coal mining operations is substantial. Such financial connections fall into the category of "indirect interests," which are also strictly proscribed by the Act.[5]

The purposes behind this prohibition are clear. The owner of a firm connected to coal operations has an obvious financial interest in coal mining, since his income may rise or fall with the fortunes of coal operators. An employee in a firm connected to coal mining has similar interests; in addition, the employee could well be subject to his employer's influence—either through persuasion or intimidation.

Despite Congressional concern for the ramifications of indirect financial interests and the obvious potential for abuse if inadequate restrictions are placed on such interests, OSM has limited its definition of "indirect interests" to those created by family ties. While this is surely one type of proscribed indirect interest, by restricting the definition to only such connections OSM has undermined the broader Congressional purpose in enacting Section 517(g) of the Act and has left open distinct possibilities for other significant conflicts of interest.

The amendment proposed by petitioners is intended to close this loophole by defining "indirect interest" so as to exclude from decisionmaking positions with the regulatory authority those persons who either own or work in firms that are significantly tied to coal operations. Such firms would include enterprises controlling or controlled by coal companies or those that make a significant portion of their income from contracts with coal operators.[6]

Petitioners would retain the family connection provision of the current regulations with two alterations. First, a family connection with persons having either direct or indirect interests to coal mining operations should also be deemed to create a proscribed indirect interest. A significant familial financial interest can influence a decisionmaker (or give rise to suspicions of influence) whether it comes directly through ownership or indirectly through other business arrangements with coal operations. Second, petitioners' proposal strikes the provision of the regulations that restricts the finding of indirect interest on a case-by-case basis to those instances where there is a relationship "between the employee's functions or duties and the [specific] coal mining operation." While many conflict of interest statutes are premised on such case-by-case determinations, the Surface Mining Act is unique in its blanket restrictions on interests in "*any* underground or surface coal mining operation." 30 U.S.C. § 1267(g). The individualized determination of disqualification suggested in the regulations has no basis in the statute.

The task of defining "indirect interest" broadly enough so as to include those connections that may influence decisionmakers yet narrowly enough so as to exclude *de minimus* or purely speculative interests inevitably requires some arbitrary distinctions. Petitioners submit, however, that the distinctions they have suggested are both supported by precedent and required in order to achieve the purposes of the Act.

Conclusion

For all the foregoing reasons, petitioners urge OSM without delay to commence a rule-making proceeding pursuant to 5 U.S.C. § 553 to promulgate the amendments to its conflict of interest regulations proposed in this petition. Since state legislatures will soon begin acting to bring their own surface-mining legislation into compliance with the permanent program requirements of the federal Act, timely action on this petition is of the essence.

---

[1] See, 121 Cong. Rec. 6786 (March 17, 1975); 121 Cong. Rec. 7046 (March 18, 1975).

[2] The Board is created pursuant to Chapter 20, Article 6, Chapter 27 of the West Virginia Code.

[3] Tennessee Code Annotated, § 58-1566. The statute also provides "* * * that no member of the Board shall participate in a case in which the firm or organization which he represents or is employed or has *direct substantial financial interest* is involved." [sic] T.C.A. 58-1556(4). This limited basis for disqualification in the statute clearly conflicts with the broad standard mandated by the Federal Act.

[4] The Colorado Act requires that "two individuals * * * [on the Board have] substantial experience in the mining industry." Colo. Revised Statutes, § 34-32-105. While not facially invalid under the Surface Mining Act, the appointment of persons attached to the mining industry violates § 517; 30 U.S.C. § 1267.

[5] *See, e.g.*, U.S. v. Mississippi Valley Generating Co., 364 U.S. 520 (1960); Note, "Conflict of Interest: State Government Employees," 47 Va. L. Rev. 1034, 1053 (1961). Although Congress itself did not define "indirect interests," the phrase is one of long-standing usage in state and federal laws and regulations. *See*, U.S. v. Mississippi Valley Generating Co., *supra* (reading "indirect interest" into the conflict of interest prohibition found in 18 U.S.C. § 208); 45 C.F.R. § 78.735-501(a); (HEW regulations); West Va. Code § 61-10-15 (prohibiting direct or indirect interests in government contracts by municipal employees). Although not clearly defined at its periphery, *see*, Note, 47 Va. L. Rev., *supra*, at 1056, Note, "The Doctrine of Conflicting Interests Applied to Municipal Officials in New Jersey," 12 Rutgers L. Rev. 582 (1958), the scope of an indirect interest prohibition would encompass the sort of connection outlined in the text.

[6] By the terms of the proposal, a "significant portion of its income" is defined as 10%. This percentage figure is taken from conflict of interest regulations of the Environmental Protection Agency for state permitting agencies. 40 C.F.R. § 124.94.

Respectfully submitted,

TERENCE L. THATCHER,
Counsel for National Wildlife Federation, 1412 16th Street, N.W., Washington, D.C. 20036, (202) 797-6863.

DAVID WOOLEY,
Counsel for Save Our Mountains, Inc., Appalachia Research and Defense Fund, Inc., 1116-B Kanawha Boulevard, East Charleston, West Virginia 25301, (304) 344-9687.

BRAD KLAFEHN,
Colorado Open Space Council, 2239 E. Colfax, Denver, Colorado 80206.

WILLIAM ALLEN,
Counsel for Save Our Cumberland Mountains, Rural Legal Services of Tennessee, P.O. Box 3358, Oak Ridge, Tennessee 37830.

L. THOMAS GALLOWAY,
Counsel for Council of Southern Mountains, Center for Law and Social Policy, 1751 "N" Street, N.W., Washington, D.C. 20036, (202) 872-0670.

[FR Doc. 79-6402 Filed 3-1-79; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1068-5]

DISTRICT OF COLUMBIA, APPROVAL AND PROMULGATION OF IMPLEMENTATION PLAN

District of Columbia Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of Proposed Rulemaking.

SUMMARY: On December 26, 1978 the District of Columbia formally withdrew its request that the Environmental Protection Agency approve a proposed revision of its Implementation Plan. The proposed "bus priority plan" revision which appeared in the FEDERAL REGISTER on March 14, 1978 (43 FR 10709), was designed to improve the efficiency of bus service (i.e., increasing both headway and average speeds) while at the same time reducing operating costs. The plan may also have resulted in improved traffic flow and consequent reduction in mobile source-related air pollutants such as carbon monoxide (CO), photochemical oxidants (Ox) and oxides of nitrogen (NOx). The District is currently not attaining the National Ambient Air Quality Standards for CO and Ox. The District, however, included a replacement bus plan as part of its overall attainment plan submitted on December 26, 1978 under Section 129C of the Clean Air Act Amendments of 1977.

EFFECTIVE DATE: This Notice of Withdrawal is effective February 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Israel Milner, Manager, Plans Management Group (3AH10), U.S. Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106.

SUPPLEMENTARY INFORMATION: On September 30, 1977, the District of Columbia submitted to the Regional Administrator, EPA Regional III, a plan for the improvement of bus travel in the District and requested that it be reviewed and processed as a revision of the District of Columbia's Implementation Plan (SIP) for the attainment and maintenance of National Ambient Air Quality Standards. On March 14, 1978 a "bus priority plan" revision was proposed in the FEDERAL REGISTER (43 FR 10709). On December 26, 1978 the District of Columbia formally withdrew its request that EPA approve a proposed bus priority plan and submitted at that time a replacement plan which included a broader revision of its Implementation Plan which is presently being reviewed by EPA. In response to this request, the Regional Administrator hereby formally withdraws his proposal of the Bus Priority Plan from any further consideration as a revision of the District of Columbia Implementation Plan.

The plan would have established approximately 50 miles of "bus priority" lanes along major radial corridors leading to and from Washington's central business district (CBD).

In conjunction with establishment and implementation of the bus priority lanes, various traffic engineering measures were recommended for implementation, including 11 additional miles of curb bus lanes, traffic signal timing changes, turn movement alterations, bus stop relocations, unbalanced traffic lanes, sign and marking work, and channelization. By implementing this entire transportation improvement program, bus speeds were expected to improve from levels of 11.7 miles per hour (mph) for local buses and 17.1 mph for express buses to 13.3 mph and 21.1 mph respectively. Because of the increased speed efficiency, as well as the additional incentives provided to encourage increased usage of bus service, reductions of motor vehicle-related pollutants (carbon monoxide, non-methane hydrocarbons) were also expected. (Currently, the District of Columbia is not attaining the National Ambient Air Quality Standards for carbon monoxide, and for photochemical oxidants resulting from chemical reactions between non-methane hydrocarbons and nitrogen oxides in the presence of sunlight.)

The District of Columbia had also requested that this bus priority plan replace the express lane measure [40 CFR Section 52.476(h)] promulgated by EPA on December 6, 1973 (38 FR 33702) as part of the transportation control plan for the District's portion of the National Capital Interstate AQCR.

The District of Columbia submitted proof that a public hearing with respect to this amendment was held on September 8, 1976 in accordance with the requirements of 40 CFR Section 51.4.

The public was invited to submit comments on whether the District of Columbia's bus priority plan should be approved as a revision of the District of Columbia's Implementation Plan. During the comment period, one comment was received from a citizen who suggested that the proposal be changed to permit the use of carpools in the bus lanes. Although no action will be taken at this time with regard to this suggestion in view of the withdrawal of the proposed rulemaking, the Administrator will consider the appropriateness of such a measure along with others, as part of the evaluation of the December 26, 1978 document entitled "Revisions to the Implementation Plan for the District of Columbia for the Attainment of the National Ambient Air Quality Standards for Particulates, Oxidants, and Carbon Monoxide.

(Authority: 42 U.S.C. 7401)

Dated: February 16, 1979.

JACK SCHRAMM,
Regional Administrator.

[FR Doc. 79-6398 Filed 3-1-79; 8:45 am]

[6560-01-M]

[FRI 1067-8]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Louisiana Regulations 18.0-30.0 and Hydrocarbon Control Strategy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rulemaking.

SUMMARY: The Governor of Louisiana submitted a revision to the State Implementation Plan (SIP) on December 9, 1977, which included a general update of current regulations, new regulations for controlling particulate matter and hydrocarbons, and a control strategy for attainment of the national standards for photochemical oxidants. Parts of this submittal are

being proposd for approval and parts are being proposed for disapproval. The revision, in part, was submitted to EPA in response to a request from the Regional Administrator. The revision, while not totally approvable, will serve to update many of Louisiana's regulations, and will provide emission reductions in particulate and hydrocarbon emissions from sources not previously controlled.

DATES: Comments on this proposed rulemaking must be received on or before April 2, 1979, in order to be considered by EPA in making a final approval/disapproval decision.

ADDRESSES: Comments on this proposed rulemaking should be submitted to the address below.

Environmental Protection Agency, Region 6, Air Program Branch, 1201 Elm Street, Dallas, Texas 75270.

Copies of the State's submittal are available for inspection during normal business hours at the office above and at the address below.

Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Jack S. Divita, Air Program Branch, Environmental Protection Agency, Region 6, Dallas, Texas, 75270 (214-767-2742).

SUPPLEMENTARY INFORMATION: The Governor of Louisiana, after adequate notice and public hearing, submitted a revision to Louisiana's regulations, and a control strategy for attainment of the national standards for photochemical oxidants. The revision, which was submitted on December 9, 1977, includes minor and administrative changes to the regulations, regulations for treatment of facility malfunctions/upsets, new regulations for controlling particulate matter (TSP), and new regulations for controlling hydrocarbon emissions. Regulation 19.0, which was part of the December 1977 submittal, will be treated in a separate notice. Regulation 29.0, which requires control of fluoride emissions from phosphate fertilizer plants, will be treated under 40 CFR Part 62. The parts of Regulation 24.0 which address the control of sulfuric acid mist will also be treated under 40 CFR Part 62.

Minor and Administrative Revisions

There are numerous minor or administrative revisions to the regulations, all of which are considered approvable. The affected regulations and a short description of the revisions are provided below.

Regulation 18.0 Control of Air Pollution from Smoke:

Section 18.2 adds soot blowing or lancing as exempt from the requirement to meet opacity limits.

In Section 18.3, a statement is added that notification to the Commission by a source which has experienced an emergency situation does not imply that an automatic exemption from emission limits will be granted by the Technical Secretary.

In Section 18.5, Section 4.34 of Regulation 4.0 is referenced for the definition of "impairment of visibility."

Section 18.7 cites section 2211 of the Louisiana Act which concerns application for exclusion of the terms of Regulation 18.0.

Regulation 20.0 Refuse Incinerators:

In Section 20.1, the reference to "incinerators" is changed to "refuse incinerators."

Section 20.2 limits the regulation to incinerators operated or constructed to reduce refuse.

In Sections 20.3 and 20.4, the reference to "incinerators" is changed to "refuse incinerators."

Section 20.5 references EPA's test methods for determining amounts of particulate.

In Section 20.6.1, the reference to "incinerator" is changed to "refuse incinerator."

In Section 20.6.2, a flame residence time for secondary combustion chambers of 0.3 seconds or greater is added.

In Section 20.6.3, the Technical Secretary may now authorize burning refuse in incinerators designed solely for burning fuel.

Section 20.6.4, Variances, is deleted.

In Section 20.7, the disposal of "suspended particulate matter" is now included.

Section 20.8 is a new section which requires that all refuse incinerators be maintained in good working order during operation.

Regulation 21.0 Emission of Particulate Matter from Fuel Burning Equipment:

In Section 21.3, emission limits now apply to "suspended particulate matter" as well as particulate matter.

In Section 21.3.1, the "Technical Secretary" may make a determination on a request for variance rather than the "Department."

In Section 21.6.1, "suspended particulate matter" is added.

Regulation 22.0 Control of Emission of Organic Compounds from New Sources and Existing Sources:

Regulation 22.0 is revised to include control of both new and existing equipment. Regulation A22.0 is deleted.

In Section 22.9, paragraph (c) is changed to allow the "Technical Secretary" to approve equivalent means of control rather than the "Commission".

In Section 22.11, the "Technical Secretary" may make a determination on a request for variance rather than the "Department".

Regulation 23.0 Control of Emissions from the Chemical Woodpulping Industry:

Equivalent metric numbers are added to Sections 23.3 and 23.4.1.

Regulation 24.0 Emission Standards for Sulfur Oxides:

In Section 24.8, the "Technical Secretary" may make a determination on a request for variance rather than the "Department".

Regulation 25.0 Control of Carbon Monoxide Emissions (New Sources):

In Sections 25.6.1 and 25.6.2, the "Technical Secretary" may approve alternate control methods rather than the "Commission".

Regulation 27.0 Prevention of Air Pollution Emergency Episodes:

In Section 27.3.2, the alert level for photochemical oxidants is changed from "200 ug/m^3 (.1 ppm)" to "400 ug/m^3 (.2 ppm)", 1-hour average.

In Section 27.3.4, the emergency level for photochemical oxidants is changed from "1200 ug/m^3 (.6 ppm)" to "1000 ug/m^3 (.5 ppm)", 1-hour average.

Regulation 28.0 Emission Standards for Particulate Matter and/or Suspended Particulate Matter—Horizontal Stud Soderberg Primary Aluminum Plants and Prebake Primary Aluminum Plants:

In Section 28.1, "suspended particulate matter" is added, and applicability of the regulation to prebake primary aluminum plants is added.

In Section 28.3, the definition for "pot line primary emission control system" is renumbered as 28.3.1. The definition for "particulate matter" is deleted, and the definitions for "prebake process primary aluminum plants" and "horizontal stud soderberg process primary aluminum plants" are added as 28.3.2 and 28.3.3, respectively.

In Section 28.5, monitoring requirements are extended to include prebake process primary aluminum plants.

In Section 28.6.2, reporting requirements are extended to include prebake process primary aluminum plants. A statement is added that notification of abnormal plant operations which result in increased emissions does not imply that an automatic exemption will be granted by the Technical Secretary.

Regulation 30.0 Severability:

The regulation concerning severability is renumbered from "28.0" to "30.0".

Malfunction Regulations

The EPA established its policy concerning excess emissions during source

start-up, shut-down, and malfunction in a regulation promulgated on April 27, 1977 (42 FR 21472). The basic concept of EPA's rulemaking is that malfunction regulations may not automatically exempt a source from applicable emission limitations. Generally, the only provisions that may be fully approved are those employing the "enforcement discretion" approach as presented in EPA's regulation. However, EPA will consider for approval a "discretionary exemption" approach. In this approach, excess emissions from a source are not considered an automatic violation of applicable emission limitations. If a determination, based on information supported by the source, is made by the reviewing agency that the excess emissions resulted from causes beyond the control of the source, then no enforcement action against the source will be taken. The "discretionary exemption" must be based on criteria similar to those described in EPA's regulation. In this approach, EPA would approve the discretion-grounded procedures only, and exemptions granted through those procedures would not be applicable as a matter of Federal law.

Section 18.4 of Regulation 18.0 provides an automatic exemption from visible emission limitations (Section 18.3) during start-up and shut-down periods. Such exemptions are obviously in conflict with either the enforcement discretion or discretionary exemption approach considered acceptable by EPA. Section 18.4 is, therefore, not considered approvable.

Sections 24.9.1, 24.9.2, 26.3.1, and 26.3.2 provide for a discretionary exemption approach by the Technical Secretary. However, criteria to be used by the Technical Secretary to determine whether an exemption shall be granted are lacking. Therefore, Section 24.9.1, 24.9.2, 26.3.1, and 26.3.2 are not considered approvable.

Hydrocarbon Emission Limitations

Any Section of Regulation 22.0 not specifically discussed, or not identified elsewhere in this rulemaking as unapprovable, is considered approvable. Louisiana's currently approved regulations for controlling new and existing sources of volatile organic compounds are identified in the SIP as Regulations 22.0 and A22.0 respectively. As revised, Regulation 22.0 incorporates control requirements for both new and existing sources. Section 22.3 provides control requirements for new and existing storage tanks used for storing volatile organic compounds. Control requirements are added for tanks, with capacities greater than 420,000 gallons, used for storing crude oil or condensate. This new provision is expected to result in additional reductions in emissions of volatile organic compounds. The control requirements are also equivalent to those promulgated by EPA (42 FR 37382). Therefore, revised Section 22.3 is considered approvable.

Section 22.5 applies to loading facilities for volatile organic compounds. The currently approved control requirements call for applicable facilities to be equipped with a vapor collection and disposal system, or its equivalent. As revised, Section 22.5 allows submerged or bottom fill as an alternative to vapor collection and disposal. Since submerged or bottom fill results in much lower emission reductions, this revision is a relaxation of the regulation. Vapor collection and disposal for applicable facilities is considered technologically and economically feasible. For these reasons, Section 22.5 is not considered approvable.

In Section 22.8, paragraph (b) requires the combustion of halogenated hydrocarbons from waste gas disposal to the extent that concentrations of the products of combustion shall not exceed "undesirable levels" at or beyond the property line. This is in essence a dispersive type control measure, and is not an acceptable substitute for constant emission limitations. Therefore, paragraph 22.8(b) is not considered approvable.

Under paragraph 22.8(c), control requirements may be waived by the Technical Secretary if a waste gas stream is not significant, will not support combustion without auxiliary fuel, disposal cannot be accomplished practically or safely, or disposal causes economic hardship. Since "significant" is not defined, it is possible that substantial emissions could be exempted from control. Similarly, it is possible that gas streams containing high concentrations of volatile organic compounds could be exempted, even if only small amounts of fuel were needed to support combustion. The provisions could result in ineffective control of waste gas streams, and could make the enforcement of Section 22.8 questionable if paragraph 22.8(c) were approved. Therefore, paragraph 22.8(c) is not considered approvable.

Sulfur Dioxide Emission Limitations

Section 24.7.1 of Regulations 24.0 requires the control of process gas streams by flaring or combustion if they contain sulfur compounds measured as hydrogen sulfide. EPA considers this to be a poor control method since flaring of even small amounts of hydrogen sulfide can produce substantial amounts of sulfur dioxide. However, since air quality data for 1975, 1976, and 1977 indicate that secondary standards for sulfur dioxide are being attained and maintained, there are not sufficient grounds for disapproval of Section 24.7.1 at this time.

Section 24.7.2 contains emission limits for sulfuric acid mist. These limits, while required under Section 111(d) of the Clean Air Act, are limits for a non-criteria pollutant, and cannot be approved as part of the SIP under Section 110 of the Act. The emission limits for sulfuric acid mist will be addressed in accordance with the requirements of 40 CFR Part 60, Subpart B.

In Section 24.7.4, emissions of sulfur dioxide are not permitted from a source which will cause ambient concentrations beyond a source's premises to exceed the values listed in Table 1. This is a dispersive or "fenceline" control method which is not an acceptable substitute for constant emission limitations. Therefore, that part of Section 24.7.4 which concerns dispersion techniques, is not considered approvable.

Section 24.8 allows the Commission to grant variances to the requirements of Regulation 24.0 if the Technical Secretary finds that compliance would be unreasonable, impractical, or not feasible. Approval of this section does not imply that the granting of such variances are automatically approved by EPA. To be part of the SIP, variances must meet the requirements of Section 51.34 of 40 CFR Part 51.

Emission Limits for Non-Criteria Pollutants

Regulation 29.0 specifies emission limitations for fluorides from phosphate fertilizer plants. These limits, while required under Section 111(d) of the Clean Air Act, are for a non-criteria pollutant, and cannot be approved as part of the SIP under Section 110 of the Act. Regulation 29.0 will be addressed in accordance with the requirements of 40 CFR Part 60, Subpart B.

Photochemical Oxidant Control Strategy

The Control strategy submitted by Louisiana for attainment of the national standards for photochemical oxidants was based on 1975 air quality data and non-methane hydrocarbon emissions. The non-attainment areas included eleven parishes in the vicinity of New Orleans, Baton Rouge, and Lake Charles. The majority of emission reductions to be achieved resulted from removal of exemptions granted by the Louisiana Air Control Commission (LACC) to various sources located throughout the eleven parishes. In presenting the data, the LACC listed each applicable source and the emission points within each source which would be affected by the exemption removals. However, the emission reductions were presented as gross per-

centages. Emission estimates, in units such as tons per year, with and without the exemptions were not provided. As a result, evaluation or verification of the control strategy cannot be accomplished. It was also stated in the control strategy that sufficient emission reductions could not be achieved for demonstrating attainment of standards in Lake Charles. Therefore, the control strategy did not provide an adequate demonstration that standards would be attained in any of the three nonattaining areas.

The LACC contends that EPA must approve the control strategy for the exemption removals to become effective. This is true only in part. Section 22.10 of Regulation 22.0 was approved by EPA on July 2, 1973. This section identifies seven specific organic compounds that are exempt from the requirements of Regulation 22.0. Removal of the exemption for any of these seven compounds would be a change to an approved regulation, and would require submittal to and approval by EPA. This can be accomplished by EPA's approval of the revised Section 22.10, and requires no separate action by EPA on the control strategy.

The currently approved Section 22.10 also lists several organic compounds which "may be considered" for exemption. Exemption of these compounds or any others not already specifically exempt, is a change to an approved regulation, and would require submittal to and approval by EPA. Removals of such exemptions granted previously would not require action by EPA for the removals to be effective, since the exemptions were never approved as revisions to the SIP.

CURRENT ACTION

The administrative or minor revisions to Louisiana's regulations are being proposed for approval in this action. Section 18.4, 24.9.1, 24.9.2, 26.3.1, and 26.3.2, which concern upset/malfunctions, are being proposed for disapproval. Section 22.5 and paragraphs 22.8(b) and 22.8(c), which concern control requirements for organic compounds are being proposed for disapproval. Sections 24.7.1 and 24.7.4, which concern control requirements for sulfur dioxide, are being proposed for disapproval. The control strategy for attainment of national standards for photochemical oxidants is being proposed for disapproval. All other revisions not identified as deficient are being proposed for approval.

Action on this revision supersedes action on revisions submitted by the Governor on December 18, 1972, May 14, 1973, January 2, 1974, June 21, 1974, and December 26, 1974.

This notice of proposed rulemaking is issued under the authority of Section 110(a) of the Clean Air Act, as amended, 42 U.S.C. 7410-(a).

Dated: February 20, 1979.

EARL KARI,
Acting Regional Administrator.

It is proposed to amend Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations as follows:

Subpart T—Louisiana

1. In § 52.970, paragraph (c) is amended by adding a new paragraph (12) as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(12) Revisions to Regulations 18.0 through 30.0 and a control strategy for photochemical oxidants, as adopted on November 30, 1977, were submitted by the Governor on December 9, 1977.

2. Subpart T is amended by adding § 52.973 as follows:

§ 52.973 Control strategy and regulations: Photochemical oxidants (hydrocarbons).

(a) The requirements of § 51.14 of this chapter are not met since the control strategy for photochemical oxidants does not adequately demonstrate attainment and maintenance of standards in the New Orleans, Baton Rouge, and Lake Charles areas. Regulation 22.5 does not provide for the degree of hydrocarbon emission reductions which are reasonably available. Regulation 22.8(b) does not provide for constant emission controls. Therefore, Regulations 22.5 and 22.8(b), as submitted by the Governor on December 9, 1977, are disapproved.

3. Subpart T is amended by adding § 52.988 as follows:

§ 52.988 Rules and regulations.

(a) The requirements of Sections 110(a)(2)(B), 123(a), and 302(k) of the Clean Air Act are not met since Regulation 22.8(c) and part of 24.7.4 are dispersion techniques rather than continuous emission limits. Therefore, Regulation 22.8(c) and that part of Section 24.7.4, except the 2000 ppm limit, are disapproved.

(b) The requirements of § 51.22 of this chapter are not met since Regulations 18.4, 24.9.1, 24.9.2, 26.3.1, and 26.3.2, which concern start-up, shutdown, and malfunction, are unenforceable. Therefore, these regulations are disapproved.

(c) Compliance with emission standards; reporting excess emissions during periods of start-up, shut-down, and malfunction.

(1) The provisions of this paragraph are applicable to stationary sources of pollution in Louisiana which are required to comply with Regulations 18.0, 24.0, and 26.0 of the Louisiana Air Control Commission.

(2) All terms used in this paragraph but not specifically defined below shall have the meaning given to them in the Clean Air Act or Parts 51, 52 or 60 of this chapter.

(i) The term "excess emissions" means an emission rate which exceeds any applicable emission limitation prescribed by the Louisiana State Implementation Plan. The averaging time and test procedures shall be that specified as part of the applicable emission limitation.

(ii) The term "malfunction" means any sudden and unavoidable failure of air pollution control equipment, process equipment, or process to operate in a normal and usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable equipment breakdown shall not be considered malfunctions.

(iii) The term "start-up" means the setting into operation of any air pollution control equipment, process equipment, or process for any purpose, except routine phasing in of process equipment.

(iv) The term "shutdown" means the cessation of operation of any air pollution control equipment, process equipment, or process for any purpose, except routine phasing out of process equipment.

(v) The term "violation" means any incident of excess emissions, regardless of the circumstances of the occurrence.

(3)(i) In the case of excess emissions from any source to which Regulations 18.0, 24.0, or 26.0 apply, for which the Administrator has issued a Notice of Violation, the owner or operator of the source may submit the following data in order to assist the Administrator in carrying out his statutory responsibility under section 113 of the Clean Air Act to: (A) take into account, when issuing an administrative order under section 113(a)(4), the seriousness of the violation and any good faith efforts to comply with applicable regulations, or (B) initiate a judicial action under section 113(b)(1) or (2) or section 113(c)(1)(A) or (B), in appropriate circumstances.

(ii) Each submission shall include, as a minimum:

(A) The identity of the stack or other emission point where the excess emissions occurred;

(B) The magnitude of the excess emissions expressed in units of the applicable emission limitation, and the operating data and calculations used in determining the magnitude of the excess emissions;

(C) The time and duration of the excess emissions;

(D) The identity of the equipment or process causing the excess emissions;

(E) The nature and cause of the excess emissions;

(F) If the excess emissions were the result of a malfunction, steps taken to remedy the malfunction, and the steps taken or planned to prevent the recurrence of the malfunction;

(G) The steps taken to limit the excess emissions; and

(H) Documentation that the air pollution control equipment, process equipment, or process was at all times maintained and operated, to the maximum extent practicable, in a manner consistent with good practice for minimizing emissions.

(4) At any time, the owner or operator of an applicable source has the right to submit data, information, or reports to the Administrator, including but not limited to the information specified in paragraph (b)(3)(ii) above, in order to assist the Administrator in carrying out his statutory responsibilities under sections 113 and 303 of the Clean Air Act.

(5) The submittal of information under subparagraphs (3) and (4) of this paragraph shall be used by the Administrator in determining the nature of the violation, the need for further enforcement action, and the appropriate sanctions, if any, under the provisions of the Clean Air Act.

(6) Information submitted under subparagraphs (3) and (4) of this paragraph shall be submitted to the Administrator, EPA Region 6, 1201 Elm Street, Dallas, Texas, 75270, to the attention of the Enforcement Division Director.

(7) Nothing in this section shall be construed to limit the obligation of an applicable source to meet applicable State and Federal requirements, nor the authority of the Administrator to institute actions under sections 113 and 303 of the Clean Air Act, or th exercise his authority under section 114 of the Clean Air Act.

[FR Doc. 79-6401 Filed 3-1-79; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1068-8; Docket No. OMSAPC-78-3]

[40 CFR Part 86]

CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

Particulate Regulations for Light-Duty Diesel Vehicles; Change in Public Hearing Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Change in Public Hearing Date.

SUMMARY: This document announces a change in the time and place for a public hearing on the EPA notice of proposed rulemaking for control of particulate emissions from light-duty diesel vehicles and trucks, published on February 1, 1979 (44 FR 6650).

DATES: March 19 and 20, 1979.

ADDRESS: The hearing will be held at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202, in Salons A and B. On Monday, March 19, 1979, the hearing will be convened at 9:00 a.m. and will be adjourned at 5:30 p.m. If a second day is necessary to complete the business of the hearing, the hearing will reconvene at 9:30 a.m. on Tuesday, March 20, 1979.

FOR FURTHER INFORMATION CONTACT:

Paul A. J. Wilson, Regulatory Management Staff, Office of Mobile Source Air Pollution Control (ANR-455), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Telephone (202) 755-0596.

SUPPLEMENTARY INFORMATION:

Participation in Hearing: Any person desiring to make a statement at the hearing or to submit material for inclusion in the record of the hearing should provide written notice of such intention, together with 10 copies of the proposed statement or material for inclusion in the record. Both statements of intention to present information at the hearing and copies of the proposed testimony or material for inclusion in the record should be submitted to the Agency by March 14, 1979 at the address given above.

Background Information: Section 202(a)(3)(A)(iii) of the Clean Air Act, as amended in 1977 (the Act), directs the Administrator of the Environmental Protection Agency to "prescribe regulation ... applicable to emissions of particulate matter for classes or categories of vehicles manufactured during and after model year 1981 ..." EPA proposed such standards for light-duty diesel vehicles and light-duty diesel trucks on February 1, 1979 (44 FR 6650).

Section 307(d)(5) of the Act requires that the Administrator provide an opportunity for the oral presentation of "data, views, or arguments in addition to an opportunity to make written comments ..." with respect to the proposed particulate regulation. The notice of proposed rulemaking published on February 1, 1979, stated that "[T]here will be a public hearing on the provisions of the proposed regulation on March 5, 1979." Because of scheduling conflicts, EPA decided to postpone the date of the hearing until March 19, 1979, with a second session, if necessary, on March 20, 1979.

The hearing is intended to provide an opportunity for interested persons to state their views or arguments or to provide information relative to the proposed emission standards and certification and test procedures for control of particulate emissions from light-duty diesel vehicles and trucks.

EPA particularly invites testimony or statements for the record on the particulate control concept identified in the proposal in which a manufacturer would be allocated a total allowable tonnage of particulate emissions for his light-duty diesel fleet. Under such a program, the manufacturer would have more flexibility to vary his product mix, within the constraints of the corporate emissions allocation, in response to the demands of the marketplace. One component of this scheme would also be to fix a maximum permissible emission level which no vehicles would be allowed to exceed. EPA specifically invites comments on the technical aspects of this concept, as well as on the practicality of this control strategy in terms of implementation, protection of public health and welfare, and reduction of the regulatory burden imposed on the industry. This concept might provide a workable means for implementing the congressionally-mandated control of particulate emissions from light-duty diesel vehicles, and EPA is interested in public discussion of this alternative to specifically-assigned emission standards with which all vehicles subject to the regulation would be required to comply.

Mr. Michael P. Walsh is hereby designated as the Presiding Officer for the hearing. He will be responsbile for maintaining order, excluding irrelevant or repetitious material, scheduling presentations, and, to the extent possible, notifying participants of the time at which they may appear. The hearing will be conducted informally. Formal rules of evidence will not apply.

Dated: February 27, 1979.

EDWARD F. TUERK,
Acting Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 79-6513 Filed 3-1-79; 8:45 am]

[1505-01-M]

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

[43 CFR Part 4]

ALASKA NATIVE CLAIMS APPEALS BOARD

Hearings and Appeals Procedures

Correction

In FR Doc. 79-4295, appearing at page 7982 in the issue of Thursday, February 8, 1979, the following changes should be made:

1. On page 7984, first column, last full paragraph, the second word in the eighth line should read, "or" and the second word in the 10th line should read, "establish".

2. On page 7984, second column, first full paragraph, the first complete word in the tenth line should read, "to".

3. On page 7984, second column, in § 4.1(5), the fourth complete word in the eighth line should read, "Native" and between the fourth and fifth words in the eighteenth line should appear the words, "relating to enrollment of Alaska Natives; the Board shall not consider appeals".

4. On page 7985, second column, the second word in the first line § 4.903(c)(1) should read, "statement" and the second word in the second line of § 4.903(c)(2) should read, "raised".

[4110-07-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[45 CFR Part 234]

AID TO FAMILIES WITH DEPENDENT CHILDREN

Protective, Vendor, and Two-Party Payments

AGENCY: Social Security Administration, HEW.

ACTION: Proposed rule.

SUMMARY: These regulations implement section 3 of Public Law 95-171 which amended sections 403(a) and 406(b) of the Social Security Act. They (1) clarify provisions for making protective and vendor payments and specifically authorize Federal funding for two-party checks; (2) require that a statement of the specific reasons for making protective, vendor or two-party payments be placed in the file of the child involved; and (3) increase the limitation on the number of individuals who can receive these payments with Federal funding from 10 to 20 percent of the number of other AFDC recipients in the State for that month.

DATES: Comments must be received on or before May 1, 1979.

ADDRESSES: Prior to final adoption of the proposed regulations, we will consider any comments submitted in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Maryland 21203.

Copies of all comments received in response to this notice will be available during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Mr. C. B. Wooldridge, 330 C Street, S.W., Washington, D.C. 20201, telephone (202) 245-8817.

SUPPLEMENTARY INFORMATION: In general Federal funds under the AFDC program are provided for money payments made to the caretaker relative for the needy family. These are payments where the State or local agency imposes no restrictions on the use of the money. The Social Security Act also provides for Federal funding on a limited basis for payments to someone other than the caretaker relative. Thus, section 406(b)(2) provides Federal matching for protective and vendor payments instead of payments directly to the caretaker relative if the State agency has determined that the relative's inability to manage the funds is jeopardizing the child's welfare.

To carry out statutory amendments made by section 3 of Public Law 95-171, we are proposing changes in our regulations to (1) clarify that two-party checks are covered under protective and vendor payments when the conditions of section 406(b)(2) are satisfied; (2) require that a statement of the specific reasons for making protective and vendor payments be placed in the file of the child for whom these payments are made; (3) increase the limitation on the number of individuals who may receive protective and vendor payments with Federal matching from 10 to 20 percent of the number of other AFDC recipients in the State for that month.

In addition these regulations provide that the State agency may not determine to make protective, vendor or two-party payments based solely on the fact that all of the family's financial obligations are not paid on a timely basis. In many States financial obligations of a welfare family for a month sometimes exceed the family's monthly income. We do not believe this provision is intended to deprive the family of its ability to make choices by authorizing a different kind of payment in these situations.

(Catalog of Federal Domestic Assistance Program No. 13/761, Public Assistance—Maintenance Assistance (State Aid).)

Dated: December 29, 1978.

STANFORD G. ROSS,
Commissioner of Social Security.

Approved: February 18, 1979.

HALE CHAMPION,
Acting Secretary of Health, Education, and Welfare.

Part 234 of Chapter II, Title 45 of the Code of Federal Regulations is amended as follows:

In § 234.60, paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(7), (a)(9), (a)(10)(ii), (a)(11)(i), and (b) are revised to read as follows:

§ 234.60 Protective, vendor, and two-party payments for dependent children.

(a) *State plan requirements.* (1) If a State plan for AFDC under title IV-A of the Social Security Act provides for protective, vendor, and two-party payments for other than WIN cases and cases in which the caretaker relative fails to meet the eligibility requirements of § 232.11 or § 232.12 of this chapter, it must meet the requirements in paragraph (a)(2) through (11) of this section.

(2) Methods will be in effect to identify children whose relatives have demonstrated such an inability to manage funds that payments to the relative have not been or are not currently used in the best interest of the child. A statement of the specific reasons that demonstrate the need for making protective, vendor, and two-party payments must be placed in the file of the child involved. This determination may not be made solely on the fact that bills are not paid on a timely basis.

(3) Criteria will be established to determine under what circumstances protective, vendor, and two-party payments will be made in whole or in part to—

(i) Another individual who is interested in or concerned with the welfare of the child or relative; or

(ii) A person or persons furnishing food, living accommodations or other goods, services, or items to or for the child, relative, or essential person.

(4) Procedures will be established for making protective, vendor, or two-party payments. Under this provision, part of the payment may be made to the family and part may be made to a

protective payee or to a vendor, or part may be made in the form of two-party payments, i.e., checks which are drawn jointly to the order of the recipient and the person furnishing goods, services, or items and negotiable only upon endorsement by both the recipient and the other person.

* * * * *

(7) Standards will be established for selection:

(i) Of protective payees, who are interested in or concerned with the recipient's welfare, to act for the recipient in receiving and managing assistance, with the selection of a protective payee being made by the recipient, or with his participation and consent, to the extent possible. If it is in the best interest of the recipient for a staff member of a private agency, of the public welfare department, or of any other appropriate organization to serve as a protective payee, such selection will be made preferably from the staff of an agency or that part of the agency providing protective services for families; and the public welfare department will employ such additional staff as may be necessary to provide protective payees. The selection will not include: the executive head of the agency administering public assistance; the person determining financial eligibility for the family; special investigative or resource staff; or staff handling fiscal processes related to the recipient; or landlords, grocers, or other vendors of goods, services, or items dealing directly with the recipient.

(ii) Of such persons providing goods, services, or items with the selection of such persons being made by the recipient, or with his participation and consent, to the extent possible.

* * * * *

(9) Review will be made as frequently as indicated by the individual's circumstances, and at least every 3 months, of:

(i) The need for protective, vendor, and two-party payments; and

(ii) The way in which a protective payee's responsibilities are carried out.

(10) Provision will be made for termination of protective, vendor, and two-party payments as follows:

* * * * *

(ii) When it appears that need for protective, vendor, or two-party payments will continue or is likely to continue beyond 2 years because all efforts have not resulted in sufficiently improved use of assistance in behalf of the child, judicial appointment of a guardian or other legal representative will be sought and such payments will terminate when the appointment has been made.

(11) * * *

(i) That a protective, vendor, or two-party payment should be made or continued,

* * * * *

(b) *Federal financial participation.* Federal financial participation is available in payments which otherwise qualify as money payments with respect to an eligible dependent child, but which are made as protective, vendor or two-party payments under this section. Payrolls must identify protective, vendor, or two-party payments either by use of a separate payroll for these cases or by using a special identifying code or symbol on the regular payroll.

(1) The payment must be supported by an authorization of award through amendment of an existing authorization document for each case or by preparation of a separate authorization document. In either instance, the authorization document must be a formal agency record signed by a responsible agency official, showing the name of each eligible child and relative, the amount of payment authorized and the name of the protective, vendor or two-party payee.

(2) The number of individuals for whom protective, vendor, or two-party payments are made who can be counted as recipients for Federal financial participation in any month is limited to 20 percent of the number of other AFDC recipients in the State for that month.

(i) In computing such 20 percent, the following individuals are not to be counted.

(A) Those with respect to whom protective or vendor payments are made for any month because caretaker relatives have refused without good cause to participate in a work incentive program or to accept a bona fide offer of employment in which they are able to engage; or

(B) Those with respect to whom protective or vendor payments are made for any month because of the refusal of caretaker relatives to comply with the eligibility requirements of § 232.11 or § 232.12 of this chapter.

(ii) The State may decide whether the same percentage limitation is applied in each local administrative subdivision or it may establish a method of assuring that the number of recipients for whom matchable payments are made does not exceed the limitation for the State as a whole.

(iii) If the number of recipients for whom protective, vendor, or two-party payments are made in any month does not exceed 20 percent of all other AFDC recipients in that month, all such payments and recipients may be included in computing Federal financial participation. If the number of recipients for whom protective, vendor, or two-party payments are made exceeds 20 percent of all other AFDC recipients, it will be necessary to identify cases whose total recipient count is within the 20 percent limit. Only the payments and recipient count for the identified cases within the 20 percent limit may be included for Federal financial participation. Other recipients receiving protective, vendor, or two-party payments must be excluded from the recipient count, and assistance payments for the other recipients must be excluded from assistance expenditures, in determining a State's claim for Federal financial participation.

(iv) In computing the 20 percent limit on the number of recipients of protective, vendor, or two-party payments the numerical limit may be rounded upward to the nearest whole number.

(Secs. 402, 403, 406, and 1102 of the Social Security Act, as amended, 49 Stat. 627, as amended, 49 Stat. 628, as amended, 49 Stat. 629, as amended, 49 Stat. 647, as amended, 42 U.S.C. 602, 603, 606, and 1302, and sec. 3 of Pub. L. 95-171, 91 Stat. 1354.)

[FR Doc. 79-6231 Filed 3-1-79; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

Office of the Attorney General

[28 CFR Ch. I]

SEMIANNUAL AGENDA OF SIGNIFICANT REGULATIONS

Announcement Regarding Publication

AGENCY: Department of Justice.

ACTION: Notice regarding the publication of the first Semiannual Agenda of significant regulations pursuant to Executive Order No. 12044.

SUMMARY: Due to certain delays in the process of approving the Department's guidelines implementing Executive Order No. 12044, the first Semiannual Agenda covering the Department's significant regulations will not be published on March 1, 1979, as had been previously announced. Also, the Department's issuing components will be publishing their own Semiannual Agenda after they are reviewed at the Departmental level. When the Department's final report on Executive Order No. 12044 is published—which is anticipated in the coming month—it will include a statement regarding the outside date by which the components should have published their regulatory agenda.

FOR FURTHER INFORMATION CONTACT:

Larry A. Hammond, Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice, Washington, D.C. 20530 (202-633-3657).

LARRY A. HAMMOND,
Deputy Assistant Attorney General, Office of Legal Counsel.

[FR Doc. 79-6578 Filed 3-1-79; 12:00 pm]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-30-M]

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

CHILD CARE FOOD PROGRAM

National Average Payment Factors and Food Cost Factors for the Period January 1–June 30, 1979

Pursuant to Section 17 of the National School Lunch Act, as amended by Pub. L. 95-627, and § 226.4 and § 226.12(h) of the regulations governing the Child Care Food Program (7 CFR Part 226), notice is hereby given that the national average payment factors and food cost factors for meals served to children attending institutions which participate in the Child Care Food Program during the period January 1–June 30, 1979, shall be as follows:

The food cost factor for breakfasts served in the Program in family and group day care homes is 28.00 cents. The food cost factor for lunches and suppers served in the Program in family and group day care homes is 50.00 cents. The food cost factor for supplements served in the Program in family and group day care homes is 17.00 cents.

National average payments for breakfasts, served in the program: (a) 12.75 cents for each breakfast served in the Program; (b) an additional 23.75 cents for each breakfast served to children from families whose incomes meet the eligibility criteria for reduced price school meals; and (c) an additional 31.75 cents for each breakfast served to children from families whose incomes meet the eligibility criteria for free school meals.

National average payments for lunches and suppers served in the Program: (a) 15.75 cents for each lunch and supper served in the Program; (b) an additional 61.50 cents for each lunch and supper served to children from families whose incomes meet the eligibility criteria for reduced price school meals; and (c) an additional 71.50 cents for each lunch and supper served to children from families whose incomes meet the eligibility criteria for free school meals.

The above factors represent a 4.78 percent increase in the factors prescribed for the period July–December, 1978. This represents the percentage of increase during the six-month period May–November, 1978 (from 215.6 in May, 1978, to 225.9 in November 1978) in the Food Away from Home series of the Consumer Price Index for all urban consumers, published by the Bureau of Labor Statistics of the Department of Labor.

For supplements served in the Program the national average payment factors will be: (a) 6.50 cents for each supplement served; (b) an additional 13.25 cents for each supplement served to children from families whose incomes meet the eligibility criteria for reduced price school meals; and (c) an additional 19.50 cents for each supplement served to children from families whose incomes meet the eligibility criteria for free school meals.

The national average payment factors for supplements served in the Program implement the new legislation, Pub. L. 95-627. The factor for supplements represents a 9.98 percent increase in the factors prescribed for 1978. This represents the percentage of increase during 1978 (from 205.4 in November, 1977, to 225.9 in November, 1978) in the Food Away from Home Series of the Consumer Price Index for all urban consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments for distribution to Program participants to be made to each State agency from the sums appropriated for the Program shall be based upon these national average payment factors and the number of meals of each type served.

Definitions. The terms used in this notice shall have the meanings ascribed to them in the regulations governing the Child Care Food Program (7 CFR Part 226).

(Catalog of Federal Domestic Assistance Program No. 10.558)

Effective date: This notice shall be effective as of January 1, 1979.

Dated: February 26, 1979.

CAROL TUCKER FOREMAN,
Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-6070 Filed 3-1-79; 8:45 am]

[3410-05-M]

Office of the Secretary

1978 CROP UPLAND COTTON PROGRAM

National Program Acreage

ACTION: Notice of Revision of National Program Acreage for the 1978 Crop of Upland Cotton.

SUMMARY: This notice is to announce a revision of the national program acreage for the 1978 crop of upland cotton which was initially announced on December 15, 1977, (42 FR 63801) to be 10,248,000 acres. This action is taken in accordance with the provisions of Section 103(f)(7) of the Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977 (7 U.S.C. 1444(f)(7)), which authorizes the Secretary of Agriculture to revise the national program acreage for purposes of determining the allocation factor if he determines it necessary based upon the latest information.

EFFECTIVE DATE: March 2, 1979.

ADDRESS: Production Adjustment Division, ASCS-USDA, 3630 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Charles V. Cunningham, (ASCS), (202) 447-7873.

SUPPLEMENTARY INFORMATION: The Secretary has determined, based upon the latest available information, that the 1978-crop upland cotton national program acreage shall be revised because projections of domestic use, exports, imports, and carryover, and the estimated national weighted average of farm program yields have changed since the initial determination. Since this revision is required to be proclaimed as soon as the decision to revise has been made, it is impracticable and contrary to the public interest to comply with the 30-day effective date requirement of 5 U.S.C. 553 and the 60-day public comment period required by Executive Order 12044. Therefore, this notice of determinaton shall become effective on the date it is published in the FEDERAL REGISTER. Accordingly, the revised national program acreage for the 1978 crop of upland cotton is determined to be the following:

DETERMINATIONS

Revised National Program Acreage for 1978-Crop Upland Cotton. It is hereby proclaimed that the final national program acreage for the 1978 crop of upland cotton shall be 10,000,000 acres. The revised national program acreage is based on the following data:

1. Estimated domestic consumption, 1978-79 (480 lb. net weight bales)..	6,200,000
2. Plus estimated exports, 1978-79 (480 lb. net weight bales).....	6,000,000
3. Minus estimate imports, 1978-79 (480 lb. net weight bales).....	10,000
4. Minus adjustment to decrease stocks to desired level (480 lb. net weight bales) [1].....	778,000
5. Times 480 lbs. per bale.....	5,477,760,000
6. Divided by estimated weighted average of farm program yields (lbs. per acre).....	579
7. Equals: (acres).....	9,460,725
8. Statutory minimum national program acreage (acres).....	10,000,000

[1]Desired carryover of upland cotton stocks is 4,500,000 bales. The carryover on August 1, 1977, was 5,278,000 bales. Thus, the stock adjustment is 778,000 bales.

NOTE.—An approved Impact Analysis Statement is available from Charles V. Cunningham (ASCS), (202) 447-7873.

NOTE.—The ASCS, to meet the requirements of the National Environmental Policy Act (Pub. L. 91-190, 45 U.S.C. 4321 et seq.), has determined that the impact of this action on the human environment is not significant and that no Environmental Impact Statement is needed.

Signed at Washington, D.C. on February 23, 1979.

BOB BERGLAND,
Secretary.

[FR Doc. 79-6097 Filed 3-1-79; 8:45 am]

[3410-01-M]

Office of the Secretary

HUMAN NUTRITION ADVISORY COMMITTEE

Notice of Intent to Establish

Notice is hereby given that the Secretary of Agriculture proposes to establish a Human Nutrition Advisory Committee to aid the Department in developing policies and programs to assure that the nutritional needs of the public are met.

The Secretary has determined that establishment of the Committee is necessary and in the public interest in connection with the duties imposed on the Department of Agriculture by law.

The Committee will be composed of 20 public members appointed by the Secretary for 1-year terms. The members will be selected from the following categories:

Four members representing consumers;

Four members representing beneficiaries of food assistance and/or nutrition education programs;

Four members representing State and local food assistance programs and/or education institutions and agencies;

Four members representing the agricultural industy, including producers, processors, and retailers; and

Four scientists in the food and nutrition area.

This notice solicits nominations from the public for membership in the above categories. Comments of interested persons concerning the establishment of this Committee, and names and resumes of recommended appointees to the Committee may be submitted to the Coordinator for Human Nutrition Policy, Office of the Secretary, U.S. Department of Agriculture, Room 419-A Administration Building, Washington, D.C. 20250, by April 2, 1979.

All written comments made pursuant to this notice will be available for public inspection at the above office during regular business hours.

JOAN S. WALLACE,
Assistant Secretary for Administration.

FEBRUARY 27, 1979.

[FR Doc. 79-6319 Filed 3-1-79; 8:45 am]

[3410-02-M]

Office of Transportation

RURAL TRANSPORTATION ADVISORY TASK FORCE

Public Meeting

The Rural Transportation Advisory Task Force, established by Pub. L. 95-580, enacted November 2, 1978, announces its first meeting, to be held March 14 and 15, 1979, in Washington, D.C. Interested persons are invited to attend.

Purpose of the Task Force. The task force will study and report on methods for enhancing the economical and efficient movement of agricultural commodities (including forest products) and agricultural inputs, including recommendations for approaches for determining the continuing transportation needs of agriculture, for establishing a national agricultural transportation policy, and for identifying impediments to a railroad transportation system adequate for the needs of agriculture. After holding public hearings, the task force will publish a final report which addresses the issues described above and which contains specific recommendations for a railroad transportation system adequate to meet the essential needs of the agricultural industry. The final report is due December 27, 1979.

Time and Place of Meeting. Meetings will be in room 218-A in the Administration Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, D.C. The first session will convene at 9:00 a.m., Wednesday, March 14, 1979. Subsequent meeting times will be announced. Meetings will run through Thursday, March 15, 1979.

Public Participation. The first meeting will deal primarily with organization, identification of issues, and setting of priorities. The public is invited to submit comments in writing at any time during the course of the task force's investigation. Public hearings, to be announced in the future, will provide opportunity for oral presentation of views. Oral participation by the public at the first, and subsequent, meetings will be at the discretion of the Chairman or Executive Director.

Space is limited. Those planning to attend, or for further information, contact Ronald F. Schrader, Executive Director, Rural Transportation Advisory Task Force, Office of Transportation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone: (202) 447-3963.

Dated: February 27, 1979.

RONALD F. SCHRADER,
Acting Director, Office of Transportation.

[FR Doc. 79-6433 Filed 3-1-79; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Order 79-2-138; Docket 34584]

AIR WISCONSIN, INC.

Order To Show Cause for an Amendment of Its Certificate for Route 186 To Provide Jamestown-Bismarck/Minneapolis Service

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 23rd day of February, 1979.

On January 10, 1978, we issued a press release (CAB 79-12) in which we announced that we are actively seeking an air carrier(s) to replace Northwest Airlines at Jamestown, North Dakota. In response, on January 26, 1979, Air Wisconsin filed an application to amend its certificate for Route 186 to allow it to provide scheduled air transportation of persons, property and mail between Jamestown, on the one hand, and Bismarck, North Dakota, and Minneapolis/St. Paul, Minnesota, on the other. The certificate amendment, as proposed, would also give Air Wisconsin nonstop authority between Bismarck and Jamestown and any of the points on its existing certificate. The application does not request subsidy. On the same date, Air Wisconsin filed a petition for an order to show cause and submitted its service proposals. It would provide three daily Minneapolis-Jamestown

nonstop round trips and two daily Bismarck-Jamestown nonstop round trips, five days per week, with reduced service on weekends, using 19-passenger Swearingen Metro aircraft. It is prepared to begin service on April 1, 1979, and finance the development of Jamestown service from revenues earned on its existing routes. Therefore, it asks that a final order amending its certificate be issued no later than March 31, 1979.

In support, it emphasizes that its schedules are designed to take maximum advantage of connecting flights at both Minneapolis and Bismarck and allow Jamestown passengers to complete business trips in a single day without overnight stays. It points to its proven record as a successful carrier, sees Jamestown service as a logical extension of its existing route system, and expects to earn a profit of $100,000 in the first established year of operations.

The Bismarck Chamber of Commerce and the Jamestown Parties[1] support Air Wisconsin's requests. Jamestown asks that it receive certificated air service, states that Air Wisconsin's application meets its current requirements in terms of both service and carrier performance, and urges quick action so that certificated service may begin on April 1.

We tentatively conclude that the grant of Air Wisconsin's application is consistent with the public convenience and necessity.[2] We further tentatively conclude that it should be accomplished by show-cause procedures. There is no opposition to the carrier's request and there do not appear to be any material determinative issues of fact which require an oral evidentiary hearing for their resolution. The proposed amendment would add Bismarck as a terminal point and Jamestown as an intermediate point, and authorize Air Wisconsin to provide nonstop service between these points and all other points on its existing certificate.

We recognize that in Order 79-2-45 we established an interim level of essential air transportation for Jamestown and invited carriers interested in serving Jamestown to file applications by February 27, 1979. However, since Air Wisconsin is currently certificated and willing to provide certificated service without subsidy beginning April 1, we can see no purpose in delaying action on its application until after February 27. Our action here is not meant to preclude other carriers from filing proposals to provide essential service at Jamestown, with or without section 401 certificate authority.

Under the Airline Deregulation Act of 1978, we must approve an application for certificate authority unless we find, by a preponderance of the evidence, that approval would not be consistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). The new act creates a presumption that the grant of all applications is consistent with the public convenience and necessity. It places on any opponents of such applications the burden of proving them inconsistent with the public convenience and necessity. Any party to this proceeding may explain in full why the authority that we propose to grant should not be issued. Such explanations should apply specifically to the application in issue, and should be sufficiently detailed to overcome the statutory presumption of favorable treatment that the Act bestows on applications.

Finally, upon review of the environmental evaluation submitted by Air Wisconsin in its application, to which no answers have been filed, we find that our decision to award it authority will not constitute a major Federal action significantly affecting the quality of the environment within the meaning of the National Environmental Policy Act of 1969, or a major regulatory action under the Energy Policy and Conservation Act of 1975.

We will give interested persons 21 days following the date of adoption of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers will be due seven days later. We expect such persons to direct their objections, if any, to specific markets, and to support such objections with detailed economic analysis. If an evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a proceeding that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

Accordingly,

1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and amending the certificate of public convenience and necessity of Air Wisconsin for Route 186 to authorize the addition of Bismarck, North Dakota, as a terminal point, and Jamestown, North Dakota, as an intermediate point;

2. Any interested person having objections to the issuance of an order making final the proposed findings, conclusions and certificate amendments set forth here shall no later than March 16, 1979, file with us and serve upon all persons listed in paragraph 5 a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied upon to support its objections; answers to objections shall be filed no later than March 23, 1979;

3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised before taking further action;

4. In the event no objections are filed to any part of this order, we will deem all further procedural steps relating to such part or parts to have been waived, and we will take no further action; and

5. We will serve a copy of this order upon Air Wisconsin, Northwest Airlines, North Central Airlines, Frontier Airlines, Braniff Airways, Eastern Air Lines, Allegheny Airlines, Ozark Air Lines, Southern Airways, United Air Lines, Western Air Lines, the Bismarck Chamber of Commerce, the Jamestown Parties, and the North Dakota Aeronautics Commission.

We will publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[3]
Secretary.

[FR Doc. 79-6312 Filed 3-1-79; 8:45 am]

[1]The city of Jamestown, North Dakota, Stutsman County, North Dakota, the Jamestown Chamber of Commerce, and the Jamestown Municipal Airport Authority.

[2]On the basis of officially noticeable data, we find that Air Wisconsin is a citizen of the United States and is fit, willing and able to perform the air services proposed and to conform to the provisions of the Act and our rules, regulations and requirements.

[3]All Members concurred.

[6320-01-M]

[Order 79-2-125; Docket 33703]

AMERICAN AIRLINES, INC.

Order To Show Cause for Amendment of Its Certificate of Public Convenience and Necessity for Route 4 (Cleveland-San Francisco)

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of February, 1979.

On October 18, 1978, American Airlines filed an application for unrestricted nonstop authority in the Cleveland-San Francisco market, accompanied by a motion for hearing. Initially, it proposes to operate one daily nonstop roundtrip using B-727-200 equipment.

In support of its motion, it argues that the market needs additional competitive nonstop service; it will offer important low-fare options; and it will make a profit of $1,802,000.

No answers were filed in response to American's motion.

We tentatively conclude, on the basis of the tentative findings below, that it is consistent with the public convenience and necessity to grant the Cleveland-San Francisco application to American and those of any other

fit, willing and able applicants whose fitness, willingness and ability can be established by officially noticeable data.[1] Further, we tentatively conclude that no oral evidentiary hearing is needed here since there are no material determinative issues of fact requiring such a hearing for their resolution.[2]

Under the Airline Deregulation Act of 1978, we must approve an application for certificate authority unless we find, by a preponderance of the evidence, that approval would not be consistent with the public convenience and necessity (Pub. L. No. 95-504, Section 14). The new Act creates a presumption that the grant of all applications is consistent with the public convenience and necessity. It places on any opponents of these applications the burden of proving them inconsistent with the public convenience and necessity (Pub. L. No. 95-504, Section 14). To give such opponents a reasonable opportunity to meet an admittedly heavy burden of proof, it is our view that applicants must indicate what type of service they would provide if, after receiving authority, they chose to serve the markets at issue. This does not mean that an applicant must show that it will provide service if it receives authority but rather what the nature of its service would be if it decided to serve. American's motion contains the required information. Should any other parties wish to apply for the Cleveland-San Francisco authority, we will give them 15 days from the date of service of this order to supply data,[3] in order to give interested persons sufficient information on the nature of the applicant's proposal to assess consistency with the public convenience and necessity. Our tentative findings concerning all applicants that have not filed illustrative service proposals are contingent on such filings.

Upon review of all the facts and pleadings in this case, we have tentatively determined that there is no reason why we should not grant San Francisco-Cleveland authority to American and any other applicant whose fitness can be shown by officially noticeable material. Our tentative conclusions comport with the letter and spirit of the Airline Deregulation Act of 1978, particularly the declaration of policy set forth in section 102 which instructs us to rely, to the maximum extent possible, on competitive forces, including potential competition.[4] See our general conclusions about the benefits of multiple authority in *Improved Authority To Wichita Case*, et al., Order 78-12-106, December 14, 1978. Accordingly, we conclude that it is desirable to award the additional authority sought by the applicants, whether or not services are in fact operated. The existence of additional operating rights in markets now being served by incumbent carriers or authorized to be served will best effect the statute's policy objective of placing maximum reliance on the decisions of the marketplace. This will occur because newly authorized carriers may actually enter the market in order to exploit unmet demand, both in terms of price and service, or because incumbents will be encouraged by the realistic threat of entry to meet that demand. Because demand is dynamic in character and therefore constantly changing, the most effective means to assure that competitive forces will operate quickly and effectively is to award multiple operating authority to carriers that are fit, willing and able to provide service.

Notwithstanding the foregoing tentative conclusions in support of multiple authority in this proceeding, we wish to make clear that we in no way desire to deter objections that might be asserted under the 1978 Act by air carriers, civic interests or other interested persons. The new statute contains a completely revised declaration of policy in section 102, as well as numerous additional and modified substantive provisions. Some of these statutory changes relate to considerations not expressly covered in the preceding statute. For example, while diversion from existing carriers will not be given decisive weight in rejecting applications for new authority except upon an extraordinary showing of financial jeopardy on the part of one or more existing air carriers, with the consequent loss of essential air service which cannot be immediately replaced, other provisions suggest that the Congress desires us to take into account other factors. These include, but are not limited to satellite airport questions and the degree of concentration within the industry and safety. Any party in this proceeding may explain in full why the authority that we propose to grant should not issue. Such explanations should apply specifically to the applications in issue, and should be sufficiently detailed to overcome the statutory presumption of favorable treatment that the Act bestows on applications.

Finally, upon review of the environmental evaluation submitted by American in its application, to which no answers have been filed, we find that our decision to award it authority does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, or a major regulatory action under the Energy Policy and Conservation Act of 1975. We reserve judgment on the environmental consequences of other possible applications, pending submission of environmental data.

We will give interested persons 30 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; replies will be due within 10 days thereafter. We expect such persons to direct their objections, if any, to specific markets, and to support such objections with detailed economic analysis. If an evidentiary hearing is required, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a proceeding that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

ACCORDINGLY,

1. We direct all interested persons to show cause why we should not issue

---

[1] Officially noticeable data consist of that material filed under Section 302.24(m) of our Procedural Regulations. Applicants whose fitness cannot be so established must make a showing of fitness, as well as dealing with any questions under sections 408 and 409 of the Act. Should such applications be filed, we will then consider how to deal with them procedurally.

On the basis of officially noticeable data, we find that American is a citizen of the United States and is fit, willing and able to perform the air service proposed and to conform to the provisions of the Act and our rules, regulations and requests.

[2] During the time American's application has been before us, it has applied for and received dormant authority in this market (Order 78-11-41). However, we do not believe this should preclude the award of the authority it seeks here. The grant of unused authority brings with it certain service requirements that are not applicable to ordinary 401 authority (Section 401(d)(5)(A) and (D)). Therefore, the recent grant of unused authority does not moot American's request here.

[3] They should submit an illustrative schedule of service in the markets at issue, which shows all points that they might choose to serve, the type and capacity of the equipment they would likely use and the elapsed trip time of flights in block hours over the segments. For the markets at issue only, they should also provide an environmental evaluation as required by Part 312 of our Regulations, and an estimate of the gallons of fuel to be consumed in the first year of operations in the market if they instituted the proposed service, as well as a statement on the availability of the required fuel.

[4] Section 102(a) specifies as being in the public interest, among other things: "The placement of maximum reliance on competitive market forces and on actual and potential competition (a) to provide the needed air transportation system, and (b) to encourage efficient and well-managed carriers to earn adequate profits and to attract capital" and "The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services."

an order making final the tentative findings and conclusions stated above and amending the certificate of public convenience and necessity of American Airlines for Route 4 so as to authorize the carrier to engage in nonstop operations between Cleveland, on the one hand, and San Francisco on the other; and amending, to grant any of the authority in issue, the certificates of any other fit, willing and able applicants the fitness of which can be established by officially noticeable material;

2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or certificate amendments set forth here, to file with us and serve upon all persons listed in paragraph 6, no later than March 29, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections; answers shall be due no later than April 9, 1979;

3. If timely and properly supported objections are filed, we will accord full considerations to the matters and issues raised by the objections before we take further actions;[5]

4. In the event no objections are filed, we will deem all further procedural steps to have been waived and we may proceed to enter an order in accordance with the tentative findings and conclusions set forth here;

5. We direct any other applicant for the authority in issue to file the data set forth in footnote 3 no later than March 14, 1979; and

6. We will serve a copy of this order upon all parties in Docket 33708.

We will publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,[6]
Secretary.

[FR Doc. 79-6313 Filed 3-1-79; 8:45 am]

[6320-01-M]

[Order 79-2-122; Docket 30635]

ARIZONA SERVICE INVESTIGATION

Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of February, 1979.

There are two issues still to be resolved in this proceeding. The first is our proposal to grant permissive, subsidy-ineligible authority to Sky West Aviation in Cochise Airlines' markets.[1] The second is Frontier Airlines challenge, in a petition for reconsideration, to our decision to make its authority between Flagstaff and Phoenix—a subsidy-eligible market on Cochise's system—ineligible for subsidy.[2] Although Hughes Airwest did not object to our making its Grand Canyon-Phoenix authority subsidy-ineligible, our resolution of the issue raised by Frontier affects Airwest as well.[3]

We have decided (1) to call for additional pleadings on the first issue and (2) to deny Frontier's petition for reconsideration. Each point is considered separately below.

1. *Order 78-8-205.*

In our principal opinion in *Arizona*, we certificated Cochise at Las Vegas, Nev., Kingman, Grand Canyon, Page, Winslow, Flagstaff, Prescott, Phoenix, Tucson and Yuma, Ariz., Blythe, El Centro and Los Angeles, Cal., and Sky West at Las Vegas, Page and Phoenix. Sky West's service is eligible for federal subsidy, as is Cochise's service at Kingman, Winslow, Prescott and Blythe.[4] By Order 78-8-205, we directed interested persons to show cause why we should not grant Sky West permissive, ineligible authority at all the points encompassed by Cochise's system to help insure improved service to the region. We tentatively found that the parallel certification would serve as a competitive prod to Cochise; that the ready availability of a replacement carrier would minimize administrative delay in the event of Cochise's unwillingness or inability to sustain its undertaking; and that certification of Sky West had no real drawbacks since it could serve points on Cochise's system anyway under section 416(b) of the Act and Part 298 of the Board's Economic Regulations.

Objections were filed by the County of Imperial, California (El Centro), and by Cochise. Imperial County argues that Sky West has no experience in serving El Centro or southeastern California and that it does not operate equipment suitable for service between El Centro and Los Angeles. The County also states that it has been seeking a non-certificated carrier to serve El Centro with aircraft larger than the Swearingen Metroliner and contends that certification of Sky West might discourage entry by such a carrier. Cochise attacks the proposal on several fronts. It argues, first, that there is no evidence showing that a competitive prod is necessary or desirable at small communities and in small markets like those Cochise serves; alternative surface transportation poses a constant competitive threat. Second, applying the test established in *Piedmont Boston Entry*, Order 78-4-69 (April 14, 1978), Cochise claims that even minimal diversion by Sky West will impair its ability to perform its certificate obligations. Its rationale is that it is already in a difficult position because the Board granted it less subsidy-eligible authority than it sought and imposed a subsidy ceiling lower than its forecast system need. If it lost substantial revenues in its larger markets or had to withdraw altogether, it could not maintain service at its subsidized points because the economies it achieves by serving a larger intergrated system would be vitiated. Third, again citing *Piedmont Boston Entry*, Cochise argues that there is no plausible set of circumstances under which Sky West could operate profitably in these markets—unless Cochise were driven out. Absent this factual predicate, Cochise argues, the Board cannot make final Order 78-8-205. Fourth, Cochise contends that, whatever the benefits of multiple permissive authority in large hub-hub markets, there is no evidence that it will work in smaller markets like those in question here. Cochise suggests a couple of reasons why it will not work and raises the possibility that both carriers, which are now financially weak, could go out of business. Finally, Cochise states that certification of Sky West would be contrary to Board precedent and unlawful.

Sky West filed an answer to Cochise's objections, generally opposing what it characterizes as Cochise's attempt to maintain a monopoly in Arizona. It denies that a competitive battle harmful to both carriers would ensue and asserts its right to enter this market if that would be in the best interest of the company and the traveler.

This show-cause proceeding was pending when the Airline Deregulation Act of 1978. Pub. L. 95-504 (October 24, 1978), was enacted.[5] Our own policy dictates that we apply the provisions of that law to this case. The principal change relevant here is the reversed burden of proof in section 401. Under section 401, grant of authority to Sky West is presumed consistent with the public convenience and necessity unless we find the contrary by a preponderance of the evidence. Cochise's objections are persuasive to a degree, but they leave a couple of crucial questions unan-

---

[5]Since provision is made for the filing of objections to this order, we will not entertain petitions for reconsideration.

[6]All Members concurred.

[1]Order 78-8-205 (August 31, 1978).

[2]By Order 78-12-7 (December 1, 1978) we stayed the effectiveness of Order 78-11-83 (November 16, 1978), which formally amended Frontier's certificate as of December 4. The decision to remove the carrier's subsidy-eligibility in the Flagstaff-Phoenix market was actually made in Order 78-8-195 (served September 5, 1978).

[3]We also stayed our decision on the Grand Canyon-Phoenix market. See note 2, *supra.*

[4]Order 78-8-195. Several conditions were imposed which are not relevant for purposes of this discussion.

[5]Compare our discussion of Frontier's petition in section 2 of this order.

swered. There are also deficiencies in the record that prevent us from entering a final order at this time.

Sky West has not yet formally filed an application for the authority in issue. Although this is a technical omission, it must be remedied before we can take further action. It will also be necessary for Sky West to submit an illustrative service proposal with its application. As Cochise correctly points out, there is no officially noticeable evidence in Docket 30635 which shows the consequences of certificating Sky West at Cochise's points. Without that type of evidence, Cochise is deprived of a fair opportunity to rebut the presumption favoring certification. We will give Sky West 30 days to file an application for authority it wants and an illustrative service proposal. The information to be provided is specified in the appendix of this order.[6] Interested parties may file comments or objections 15 days later.

There are some issues that need not be addressed in this next round of pleadings; on the other hand, there are some that the parties should focus on. Section 33 of the Deregulation Act, which adds section 419 to the 1958 Act, alleviates our concerns in Order 78-8-205 about assuring service of acceptable quality and avoiding administrative delay in finding a replacement for Cochise, if necessary. It guarantees "essential air transportation" to all eligible points for ten years with federal subsidy where needed.[7] Moreover, section 419 requires ample notice by Cochise if it decides to discontinue service and allows us to direct Cochise to stay until we find a replacement. The replacement need not be a certificated carrier as long as it meets our fitness test and the FAA's safety requirements (section 419(c)).[8] Hence, there is no longer any particular advantage to having Sky West waiting in the wings with a certificate in hand.

Cochise has claimed that we ought not to apply the multiple permissive entry policy to these markets. In support of its position, it extracts figures from the record to show that competition would imperil its ability to maintain what we might well consider essential air transportation under the new law. Even if we accept Cochise's prediction, the critical question remains unanswered: what difference would certification make? Under section 416(b)(4) of the Act (section 32 of the Deregulation Act), Sky West or any other carrier operating aircraft with fewer than 56 seats may enter any of Cochise's markets at any time as an exempt carrier. Also, Sky West could gain certificate authority in some markets under the unused authority provisions (section 10) or the automatic market entry provisions (section 12) of the Deregulation Act. We would like Cochise to explain why permissive certification of Sky West here will make any difference when the result Cochise seeks to avoid may occur anyway. Is Sky West more likely to compete directly if we issue a certificate and, if so, why?

Finally, Cochise asserted without much elaboration that it would be unlawful to make final Order 78-8-205. One reason, that Sky West has not applied, is being taken care of now. The other reasons are that it would be inconsistent with the public convenience and necessity and that we cannot do it without a hearing. Cochise should expand on its legal arguments in responding to this order.

2. *Frontier's Petition*

On December 1, 1978, Frontier Airlines submitted a telegram requesting us to stay the portion of our decision making Frontier's Flagstaff-Phoenix authority ineligible for subsidy under section 406 of the 1958 Act until it had time to file its petition. We granted the request by Order 78-12-7 (December 1, 1978).[9] Frontier then filed a petition for reconsideration of Order 78-11-53 in which it argued that we have to apply the provisions of the Airline Deregulation Act to this case and that section 24 of the new law prohibits us from terminating its subsidy eligibility in the Flagstaff-Phoenix market.

Cochise answered with a two-fold rebuttal: (1) the new law should not be applied to this case; and (2) Frontier's interpretation of the amendments to section 406(b) is incorrect. Frontier replied to Cochise's answer, and Cochise responded to Frontier's reply.[10]

It is our tentative view, based on these pleadings and our analysis, that Frontier's construction of section 24 of the new law is wrong in that we do have authority to discontinue subsidy-eligibility in a market.[11] However, there is no reason to address that question on the merits here because we reject Frontier's assertion that we have to apply the new law to this proceeding.

Frontier bases its claim on our "Notice of Applicability of Airline Deregulation Act of 1978 to Cases Pending at Time of its Enactment," dated November 16, 1978. We said there that we intend "to apply those sections of the new law which were effective immediately to all cases still pending at the time of its enactment." The controversy is whether or not *Arizona* was "pending" on October 24 within the meaning of our Notice and the applicable judicial precedents cited in it. Also pertinent is the saving clause in the new law, section 47, which provides:

> All orders, determinations, rules, regulations, permits, contracts, certificates, rates, and privileges which have been issued, made, or granted, or allowed to become effective . . . shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Board, or by any court of competent jurisdiction, or by operation of law.

We made our "determination" in this case on August 31 and served our opinion on September 5. It was a "final order" subject to any action we might have decided to take in response to petitions for reconsideration. See Rules 36 and 37 of the Rules of Practice. It is also a final agency decision ripe for judicial review. We could have made the certificate amendments effective immediately, but it has been our consistent policy to defer the effectiveness for 60 or 90 days to consider any petitions for reconsideration. If we allowed them to become effective, we could not then modify them in any way without instituting a new or reopened proceeding under section 401(g) of the Act.[12] Our deferral of the effective date then, is a matter of administrative convenience, not a matter of legal right.

The time allotted for filing petitions expired on September 25; Frontier did not file one.[13] On October 24 the Airline Deregulation Act became effective, on November 16 we issued our order on reconsideration (Order 78-11-83), and on December 1, nearly six weeks after the new law became effective, Frontier sought a stay of the effective date of its amended certificate. We readily concede that the Deregulation Act was a new matter that Frontier could not have "known or discovered," within the meaning of rule 37(b), until October 24. But Frontier's claim that the case was still pending between October 24 and November 16

[6] There is sufficient evidence in Docket 30635 to establish Sky West's fitness; therefore, no additional information related to fitness need be provided.

[7] All 13 points certificated for Cochise are eligible points within the meaning of section 419(a). In addition, Douglas, Ariz., which Cochise sought but did not receive in this case, is an eligible point under section 419(b) because it was deleted from American Airlines' system after July 1, 1968.

[8] Section 419 and its applicability are discussed in more detail in Order 78-12-151 (December 21, 1978).

[9] Under prevailing law, we could not amend Frontier's certificate again in this proceeding if we had allowed it to become effective on December 4. *Delta Air Lines, Inc.* v. *CAB*, 280 F.2d 43 (2nd Cir. 1960), *aff'd sub nom. CAB* v. *Delta Air Lines, Inc.*, 367 U.S. 316 (1961).

[10] Both of these pleadings were accompanied by motions for leave to file the otherwise unauthorized documents which we will grant.

[11] See *Investigation of the Local Service Class Subsidy Rate*, Order 79-1-38 (served January 11, 1979), at 16-17.

[12] See n. 9, *supra*.

[13] The only one filed was Sky West's which sought a further deferral of the effective date of its certificate.

strikes us as disingenuous, at best. For purposes of our "Notice of Applicability" and the substantive provisions of the Airline Deregulation Act, this case's pendency ceased on September 5 when we served our final order.[14] On the date of our final determination, the applicable law was the 1958 Act, unamended by the 1978 law. The effective dates of the certificates issued with that final determination are irrelevant.[15]

ACCORDINGLY, THE BOARD:

1. Grants the motions of Cochise Airlines and Frontier Airlines for leave to file otherwise unauthorized pleadings;

2. Denies Frontier Airlines' petition for reconsideration;

3. Dismisses Cochise's motion to vacate the stay;

4. Vacates the stay granted by Order 78-12-7 and makes the amended certificates of Hughes Airwest and Frontier Airlines effective on December 4, 1978, the date on which they would have become effective absent the stay; and

5. Directs Sky West Aviation to file and serve upon the parties to Docket 30635 its application and the data described in the appendix to this order no later than March 29, 1979; objections, comments or rebuttal exhibits may be filed 15 days thereafter.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-6315 Filed 3-1-79; 8:45 am]

[6320-01-M]

[Docket 33363]

FORMER LARGE IRREGULAR AIR SERVICE INVESTIGATION

Notice of Postponement of Hearing

The hearing on the application of IAL, Inc., heretofore continued to 6 March 1979 (44 FR 6965, 31 January 1979), is continued to 27 March 1979 at 9:00 a.m. in Room 1003, Hearing Room B, 1875 Connecticut Avenue, N.W., Washington, D.C. 20428.

Dated at Washington, D.C., 26 February 1979.

RUDOLF SOBERNHEIM,
Administrative Law Judge.

[FR Doc. 79-6306 Filed 3-1-79; 8:45 am]

[6320-01-M]

[Docket 26348]

INSTITUTIONAL CONTROL OF AIR CARRIERS INVESTIGATION

Notice of Reassignment of Proceeding

This proceeding has been reassigned from Administrative Law Judge Arthur S. Present to Chief Administrative Law Judge Nahum Litt.

Dated at Washington, D.C., February 26, 1979.

NAHUM LITT,
Chief Administrative Law Judge.

[FR Doc. 79-6307 Filed 3-1-79; 8:45 am]

[6320-01-M]

[Docket 30699]

OAKLAND SERVICE CASE; (ECONOMIC PHASE)

Continuation of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing in the above-titled proceeding, which was held on February 21, 1979 (44 FR 6486, February 1, 1979) will be continued on March 8, 1979, at 10:00 a.m. (local time), and will be held in Room 1003, Hearing Room C, Universal North Building, 1875 Connecticut Avenue, N.W., Washinton, D.C.

Dated at Washington, D.C., February 26, 1979.

ALEXANDER N. ARGERAKIS,
Administrative Law Judge.

[FR Doc. 79-6311 Filed 3-1-79; 8:45 am]

[6320-01-M]

[Docket 34770]

RENO-CHICAGO SHOW CAUSE PROCEEDINGS

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-2-94, (Reno-Chicago Show Cause Proceedings), Docket 34770.

SUMMARY: The Board is making final the tentative findings of Order 78-9-89 and awarding Reno-Chicago authority to American Airlines, Inc. (Docket 32873). The Board is also proposing to grant Reno-Chicago authority to Allegheny Airlines, Trans World Airlines, Braniff Airways, Northwest Airlines, Ozark Air Lines, and Continental Airlines, and any other fit, willing and able applicant where fitness can be established by official noticeable data. The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below no later than March 26, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support to stated objections.

Additional Data: All existing and would-be applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) an estimate of fuel to be consumed in the first year are directed to do so no later than March 16, 1979.

ADDRESSES: Objections or Additional Data should be filed in Docket 34770, Docket Section, Civil Aeronautics Board, Washington, 20428.

FOR FURTHER INFORMATION CONTACT:

Tadas Osmolskis, Bureau of Pricing & Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5349.

SUPPLEMENTARY INFORMATION: Objections should be served upon the following persons: Allegheny, American, Braniff, Continental, Northwest, Ozark, TWA and the Reno Parties.

The complete text of Order 79-2-94 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 79-2-94 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board, February 15, 1979.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-6316 Filed 3-1-79; 8:45 am]

[6320-01-M]

[Order 79-2-123; Docket 31298]

SKY WEST AVIATION, INC.

Order to Show Cause for Issuance of a Certificate of Public Convenience and Necessity

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of February, 1979.

By this Order, we are fulfilling the promise made in Order 78-7-11.[1] There we deferred action, pending the issuance of our final order in the *Arizona Service Investigation* (*"Arizona"*)[2], on

[14] We have looked again at the rule developed in *Bradley* v. *School Board of the City of Richmond*, 416 U.S. 696 (1974), in light of the Deregulation Act. See our "Notice of Applicability" for a detailed discussion of the *Bradley* rule. We believe that Congress intended that we not reopen cases such as *Arizona*, in which we have entered our final order, and that nothing in the *Bradley* rule requires that its principles be applied to this case.

[15] On February 5, 1979, Cochise filed a motion to vacate the partial stay granted by order 78-12-7. Frontier answered in opposition. In light of our action in this order, we will dismiss the motion.

[1] July 7, 1978.

[2] Docket 30635.

Skywest's motion for issuance of an order to show cause why its application for subsidy-eligible authority at certain points should not be granted.[3] We wanted to apply the same policies in both orders because the issues raised here are intimately intertwined with the questions considered in *Arizona*.

THE ARIZONA SERVICE INVESTIGATION

Our decision in *Arizona*,[4] among other things, granted Sky West authority between Page, Arizona, and Las Vegas, Nevada, and between Page and Phoenix, with subsidy at Page for a three year period at an annual ceiling of $160,000.[5] We also granted limited, subsidy-eligible authority for a three year duration to Cochise at Kingman, Prescott and Winslow, Ariz., and Blythe, Calif., in addition to granting it permissive subsidy-ineligible authority at the hub points of Las Vegas, Phoenix, Tucson, and Los Angeles, and at the small communities of Page, Flagstaff, Grand Canyon and Yuma, Ariz., and El Centro, Calif.

In our order, we classified the small Arizona communities at which Cochise and Sky West desired to provide subsidy-eligible service into three groups. Into Group 1 we placed those points that serve relatively large populations and made them subsidy-ineligible. Group 2 communities (which include Page) were classed as subsidy-eligible, in order to give Cochise and Sky West the opportunity to create a viable self-supporting network of services. Group 3 consisted of those communities that have never received certificated service (or where service was deleted several years ago) and for which no pressing and exceptional reason for subsidized services was shown. We declined to certificate the Group 3 communities.

SKY WEST'S MOTION FOR ORDER TO SHOW CAUSE

On August 22, 1977, Sky West applied, in this docket, for authority, on a subsidy-eligible basis, between the terminal point Salt Lake City, the intermediate points Cedar City and St. George, and the coterminals Las Vegas and Page.[6]

In support of its motion for an order to show cause, it argues that: the equipment it currently uses on these routes—Piper Navajo 9 passenger aircraft—must be upgraded to Swearingen Metroliner II aircraft, because the single-pilot, non-pressurized, non-air conditioned Navajos are not suitable for flights over rugged terrain; it cannot afford to acquire such aircraft without Board subsidy; St. George should be subsidized because it is the location of the company's home office and maintenance base; and, with modern, pressurized Metro equipment, it would provide more weekend service to the small communities than it does currently.[7] Finally, it argues that we should issue a show-cause order proposing to grant its application, contingent upon favorable action on its request in *Arizona*.

There were no other applications for service between St. George, Cedar City and Salt Lake City; however, a number of responsive pleadings were filed.

The Town of Page answered in support of Sky West's motion, citing the strong community of interest among Page, St. George, Cedar City, Las Vegas, Phoenix, and Salt Lake City, and contending that Cedar City and St. George require pressurized aircraft as much as Page and the neighboring Arizona cities. The Utah parties also answered in support of the motion.[8] Subsequently, the Utah Congressional delegation,[9] and the Cities of St. George and Cedar City, respectively, filed motions urging us to act favorably and expeditiously on Sky West's motion for issuance of a show-cause order. Hughes Airwest, which had requested and received a temporary suspension of authority at Page and Cedar City, also supported Sky West's motion.[10]

Cochise answered in opposition, alleging that Section 401 of the Federal Aviation Act of 1958, as amended, and Board precedent require an oral evidentiary hearing before the initial grant of a certificate, and that Sky West's exhibits in Docket 31298 do not provide an adequate evidentiary basis for a determination of whether the public convenience and necessity require the grant of the authority requested. It urges us to deny Sky West's motion without prejudice to its renewal after a decision in *Arizona*. Sky West filed a motion to strike Cochise's answer.[11]

On June 6, 1978, Sky West amended its motion for a show-cause order to demonstrate that we should subsidize Cedar City and St. George. It asserts that these communities are severely isolated, since the driving time from Cedar City to its nearest air service center is 3½ hours and St. George is 50 miles from Cedar City; and that the number of enplanements meets the criteria for designation as subsidy-eligible points.[12] It also states that its fares have been lower than those charged by Airwest. Further, it maintains that the current service (five daily round trips between St. George, Cedar City and Salt Lake City and three daily round trips in the St. George-Page and St. George-Las Vegas markets) has reached its maximum efficiency and that the lower seat mile costs of the Metro and growing traffic volume[13] warrant upgrading now. The City of Page joined in support of the amendment, and the Utah parties filed a supporting answer.

Nevada Airlines answered in opposition to Sky West's amendment, contending that the motion and amendment are defective in that they do not contain adequate factual support; if Sky West operated between Phoenix, Grand Canyon and Las Vegas, it would compete with Nevada and several other airlines that do not receive subsidy; and Sky West has not justified its subsidy need. Nevada also petitioned for leave to intervene in this proceeding.[14]

---

[3] Docket 31298. Sky West's Motion for Show-Cause Order was filed on September 30, 1977, and an Amendment "No 1" was filed on June 6, 1978.

[4] Order 78-8-195, September 5, 1978. By Order 77-8-21, August 5, 1977, we had consolidated into the *Arizona* docket that portion of Sky West's application seeking subsidized authority to provide service in the Page-Las Vegas/Phoenix markets. We dismissed, without prejudice, that part of its application seeking authority on a subsidy-eligible basis in the Salt Lake City-Cedar City/St. George markets (the "Utah markets").

[5] *Arizona*, pp. 23 and 25.

[6] In its application, Sky West stated the conditions under which it would operate that service:

"(1) The carrier shall have the right to operate short of terminals.

(2) The carrier shall have the right to skip intermediate points. Carrier should be required between terminal points to serve only one intermediate point."

On September 30, 1977, it moved for issuance of an order to show cause why its authority should not be granted.

[7] Compare, Attachment A, Page 2 of 8 (Skywest's System Timetable—effective August 12, 1978), to Exhibit SW-201, (proposed schedule for Sky West, 1978, using Metro II aircraft).

[8] The State of Utah, the Utah Department of Transportation, Salt Lake City Corporation, the Salt Lake Area Chamber of Commerce, the Cedar City Corporation, and the City of St. George.

[9] U.S. Senators Hatch and Garn, and Representatives McKay and Marriott.

[10] In 1975, Airwest applied for deletion or suspension of its authority at Cedar City and Page. By Order 77-1-133, January 24, 1977, we permitted Airwest to suspend service for three years contingent upon the provision of a satisfactory pattern of scheduled commuter service by Sky West or an acceptable Part 298 Operator. (See also Order 77-6-61, June 10, 1977, raising the minimum level of service required).

[11] See note 5, page 3, of Order 78-7-11, where the motion was denied.

[12] In 1977, Cedar City generated 13.65 passenger enplanements per day, and St. George 10.65.

[13] See amendment No. 1 to Motion of Sky West Aviation, Inc. for Show Cause Order, p. 10.

[14] Sky West replied to Nevada Airlines' petition to intervene, stating that Nevada's concerns are in markets not involved in this docket and that Nevada should have filed for intervention in *Arizona*.

TENTATIVE CONCLUSION

We tentatively conclude, on the basis of the tentative findings below, that it is consistent with the public convenience and necessity to (1) authorize Sky West to provide subsidy-eligible service at Cedar City; (2) amend Sky West's certificate in the manner shown in Appendix A[15] and (3) grant it subsidy for service at Cedar City for a period of three years at a yearly ceiling of $145,000, pursuant to Section 406(b). We also tentatively conclude that such an award can be made without the necessity of an oral evidentiary hearing since there are no material determinative facts which require such a hearing for their resolution.

SECTION 406 SUBSIDY

On October 24, 1978, the President of the United States signed into law the Airline Deregulation Act of 1978 ("Act") which amended Section 406(b) and created a new "Section 419 Small Communities" program. Section 419 establishes a comprehensive program for guaranteeing essential air transportation [16] at small communities. We intend to rely on this section, rather than on Section 406, as our basic method for determining which points are eligible for subsidy and the appropriate rate of compensation we will pay in each instance.

Having said this, we nevertheless read the statute as giving us discretion to continue to compute subsidy in this case in accordance with the terms of Section 406. At first blush, a sentence in the amended Section 406 might be read as generally prohibiting a carrier which did not receive subsidy in 1977 from receiving subsidy computed under Section 406. The sentence is:

"Notwithstanding any other provision of this section, rates of compensation paid to any carrier under this section for service performed between the date of enactment of this sentence and January 1, 1983, shall be based on the subsidy need of such carrier with respect to service performed to points for which such carrier was entitled to receive compensation for serving during calendar year 1977."

After consideration of the sentence in context, however, it is clear to us that it addresses the *rate* of compensation to be paid, rather than the basic question of *whether or not* subsidy should be paid. Section 406 is entitled "Rates for Transportation of Mail," and Section 406(b), of which the quoted sentence is a part, is entitled, "Rate Making Elements." Furthermore, the subsection begins, "In fixing and determining fair and reasonable rates of compensation under this section . . ."

In addition to the plain language of the act, the legislative history indicates that Congress intended to give the Board the discretion to authorize subsidy payments to carriers which did not receive subsidy during 1977. The Senate bill [17] contained a proposed amendment to Section 406(c), reading:

The Board may make payments pursuant to this section only to those air carriers which were entitled to receive compensation from the Board under the provisions of this section for the performance of services during the 12 months ended June 30, 1977. The Board shall make no payments under this section for any services performed after January 1, 1986.

The first sentence of this quoted language would clearly prohibit us from making Section 406 payments to carriers not receiving subsidy during the 12 months ended June 30, 1977. However, the bill, as reported out of the conference committee,[18] and as eventually enacted, does not contain such language. This fact, plus the fact that the amended Section 406(c) contains the second sentence of the quoted language, strongly indicates that Congress considered and decided against restricting carriers' eligibility for Section 406 subsidy, at least prior to 1986. Accordingly, we retain our authority to give Section 406 subsidy to carriers that did not perform subsidized service in 1977.

At the same time, we emphasize that Section 419 will be our vehicle for subsidy payments and we will utilize Section 406 here because of the unique circumstances. The use of Section 406 is justified here because of the intimate relation existing between this proceeding and *Arizona*,[19] which was totally tried under the 1958 Act. The parties to *Arizona* participated in the oral hearing and drafted their respective briefs in expectation that the Administrative Law Judge and the Board would apply the terms of Section 406 to any subsidy awarded as a result of that proceeding. Indeed, our Order deciding *Arizona* was issued under the 1958 Act. The combination of Sky West's authority at issue in *Arizona* and that at issue here forms an integrated system, and the carrier intends to operate over those points in a unified service pattern. In view of the strong ties between the dockets,[20] we find it fully within our statutory discretion to compute Sky West's subsidy under Section 406.

CEDAR CITY

As we discuss above, due to the interrelationship between the dockets, we will apply the criteria developed for *Arizona* to determine what communities should be certificated and be eligible for subsidy.

We conclude that Cedar City falls within Group 2 of the classifications developed in *Arizona*.[21] Cedar City has been provided certificated service with Airwest's large aircraft, with disappointing results. (See footnote 10, above.) Airwest requested either suspension or deletion at Cedar City and Page in 1975, and the points are now temporarily suspended, contingent upon the provision of a specified level of scheduled commuter service to Salt Lake City or Las Vegas by Sky West or an acceptable Part 298 carrier. Sky West claims that safe, comfortable and reliable service can be provided only with larger aircraft than it can afford, and requests a temporary, limited subsidy to provide such service.

Cedar City clearly is closest to the characteristics of the *Arizona* Group 2 communities. Accordingly, as we did in the case of Kingman, Prescott, Winslow, Blythe [22] and Page,[23] we are willing to grant a limited amount of subsidy for an experimental period to Sky West for service to Cedar City to see if a self-supporting service geared to the needs of the community can be provided. Sky West has expressed a willingness to have such a subsidy ceiling imposed, and we propose to calculate it on the basis of an assumed pattern of service in the Cedar City-Salt Lake City market. We have chosen this market because Salt Lake City is the capital of Utah and the Administrative Law Judge in *Hughes Airwest Suspen-*

[15] By Order 78-8-195, after a full evidentiary hearing, we concluded that Skywest is a citizen of the United States and is fit, willing, and able to perform properly the air transportation at issue there and to abide by the Act and our rules and regulations. We believe that these findings are still valid. In addition, based on its environmental evaluation, submitted on July 31, 1978, in Docket 31298, we find that our proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, (NEPA), and is not a "major regulatory action" requiring an energy statement pursuant to section 313.4 of the Board's Procedural Regulations.

[16] Defined in Section 419(f).

[17] S. 2493, 95th Cong., 2d Sess. § 7 (1978).

[18] H. Rep. 95-1779, 95th Cong., 2d Sess. (1978).

[19] In Order 78-7-11, we incorporated by reference Sky West's operational and financial exhibits filed in Docket 30635 into Docket 31298.

[20] Our statement in Order 78-11-83, November 16, 1978, to the effect that the issues in Docket 31298 and in Docket 30635 "are different" was designed to signify that the markets in issue were different, and that Docket 31298 involved only one applicant for subsidy, not two. It was not meant to imply that the *Arizona Service Investigation* and Sky West's application in Docket 31298 are not closely related; indeed, we find that they are.

[21] In 1977, Cedar City enplaned 13.65 passengers per day. The driving time between Cedar City and Las Vegas, its nearest air service center, is about 3½ hours.

[22] We granted subsidy for a limited duration to Cochise at these four communities.

[23] We granted subsidy for a limited duration to Sky West at Page.

sion and Deletion of Service at Cedar City, and Page, Arizona (Dockets 27907 and 27908) found Salt Lake City to be Cedar City's principal community of interest. We assume two daily round trips in the Salt Lake City-Cedar City market, resulting in 322,660 annual subsidy-eligible miles, and we propose to use a 45 cent per mile subsidy rate based on the experienced operating costs and revenues and investment requirements of a Swearingen Metro.[24] This amounts to $145,000 a year. Although the Cedar City-Salt Lake City market is used for purposes of calculation of the ceiling, Sky West may operate subsidized service in any of the Cedar City markets, and we will not necessarily subsidize service in all the markets. The precise amount of subsidy, within this ceiling, will be determined later in a section 406 proceeding. We emphasize again that this is not a determination of Cedar City's essential air transportation within the meaning of section 419; it is merely an application of the same methodology we used to estimate subsidy ceilings in our *Arizona* decision.

ST. GEORGE

St. George has never received certificated service and does not receive it now. While, as explained above, the Deregulation Act gives us some flexibility in determining whether to calculate subsidy for eligible points under section 406 or section 419, it gives us no discretion to add new eligible points except those deleted since July 1, 1968, and points in the states of Alaska and Hawaii. Section 419 defines eligible points as (a) those currently certificated, whether served or suspended, and (b) those deleted from a certificate between July 1, 1968, and October 24, 1978, and points in Alaska and Hawaii. If Congress had intended that we be able to add any other new points, it would not have included the explicit limitations in section 419(b). We do not take this to mean that we can never add new points to certificates. It means simply that points certificated after October 24, 1978, which do not fall within the provisions of section 419(b), cannot be given eligibility for subsidy and cannot qualify for a determination of their essential air transportation. If Sky West wants St. George placed on its certificate as an *ineligible* point, it should so indicate in response to this order.

COCHISE

On August 31, 1978, we issued Order 78-8-205, where we proposed to authorize Sky West to provide certificated service on a subsidy-ineligible basis at the points at which we certificated Cochise in our *Arizona* order.[25] As explained above, the Deregulation Act[26] was enacted on October 24, 1978; the provisions in the newly-enacted Section 419 have caused us to re-evaluate the policies enumerated in Order 78-8-205. Since we have not yet made final that show-cause order, we decline to propose here the authorization of Cochise to provide certificated service on a subsidy-ineligible basis at Cedar City.

PART 298 OPERATIONS

As we provided in *Arizona*, we propose to permit Sky West to continue to offer Part 298 service[27] in addition to its certificated service. In addition, we will not require that Sky West report its revenue, expense and investment data relating to its Part 298 operations with us; however, we expect it to have this data available for our inspection so that we will not consider its Part 298 operations in our calculation of its subsidy rate.

Accordingly,

1. We direct all interested persons to show cause why we should not issue an order (1) amending Sky West's certificate of public convenience and necessity for regional feeder service for Route 185 in the manner shown in the Appendix; (2) exempting Sky West from Section 298.3 of the Economic Regulations to the extent that it would otherwise prevent the carrier from operating as an air taxi under Part 298; (3) classifying it as an "Air Taxi Operator" within the meaning of Part 298 of the Economic Regulations for any non-certificated operations it may conduct and requiring it to comply with the provisions of that Part, and in its air taxi operations, to comply with our denied boarding rules (Part 250), the no-smoking rules (Part 252) and the baggage liability rules, as set forth in Docket 27589; and (4) making final all other tentative findings and conclusions stated here;

2. We direct any person objecting to the issuance of an order making final our proposed findings, conclusions and certificate amendments to file, within 30 days of the service date of this order, (no later than March 29, 1979) and serve upon all persons listed in paragraph 8 a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied on to support its objections; we direct that answers to objections be filed within 10 days thereafter (no later than April 9, 1979);

3. If timely and properly supported objections are filed, we will fully consider the issues raised before we take further action;[28]

4. In the event no objections are filed, we will deem all further procedural steps waived and we may proceed to enter an order in accordance with the tentative findings and conclusions we have set forth here;

5. We grant Sky West's Motion for leave to file an unauthorized document;

6. We reserve the right to amend or revoke the exemption for air taxi operations in our discretion any time without a hearing; and

7. We shall serve this order upon all parties to the *Arizona Service Investigation*, Docket 30635, and upon Nevada Airlines, the Mayors of Cedar City, St. George and Salt Lake City, Phoenix and Las Vegas, the Salt Lake City Corporation, the Salt Lake City Chamber of Commerce, the Utah Department of Transportation, U.S. Senators Hatch and Garn, U.S. Representatives McKay and Marriott and the Governor of Utah.

We shall publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[29]
Secretary.

APPENDIX.

UNITED STATES OF AMERICA, CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR REGIONAL FEEDER SERVICE FOR ROUTE 185

Sky West Aviation, Inc. is authorized, subject to the following provisions, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules and regulations issued under it, to engage in air transportation of persons, property and mail:

Between the terminal point Salt Lake City, Utah, the intermediate points Las Vegas, Nev., Cedar City, Utah, Page, Ariz., and the terminal point Phoenix, Ariz.

The service is subject to the following terms, conditions and limitations.

(1) The holder may begin or terminate, or begin and terminate, trips at points short of terminal points and may operate nonstop service between any two named points: *Provided*, That the holder shall schedule a minimum of one intermediate stop on flights between the following pairs of points:

---

[24] As we said in *Arizona, supra*, p. 25, we are not requiring Sky West to use Metros. We propose to grant it discretion to use whatever equipment it deems best suited to these markets. Such equipment should, however, meet minimal safety and equipment requirements and we will consider the equipment used in determining whether management is acting prudently and efficiently.

[25] These points are: Yuma, Kingman, Prescott and Winslow, Arizona, Blythe, El Centro and Los Angeles, California, and between the Grand Canyon and Phoenix and between Flagstaff and Phoenix.

[26] Pub. L. 95-504, 92 Stat. 1705 (October 24, 1978).

[27] Part 298 of our Economic Regulations.

[28] Since we have provided for the filing of objections, we will not entertain petitions for reconsideration.

[29] All Members concurred except Chairman Cohen who did not participate.

Las Vegas—Phoenix Salt Lake City.
Phoenix—Salt Lake City.

(2) The holder may continue to serve regularly any point named here through the airport last used regularly to serve that point before the effective date of this certificate. Upon compliance with procedures prescribed by the Board, the holder, may, in addition, regularly serve a named point through any convenient airport.

(3) Operations between Page on the one hand, and Las Vegas and Phoenix, on the other hand, and between Cedar City, on the one hand, and Salt Lake City, Phoenix and Las Vegas, on the other hand, shall be eligible for federal subsidy in excess of the service rate paid by the Postmaster General, subject to the following conditions:

(a) The holder shall not receive more than $160,000 annually in federal subsidy for service to Page and $145,000 annually for service to Cedar City;

(b) The holder's entitlement to subsidy shall terminate on ——; and

(c) The holder shall not request or receive any compensation in excess of the service mail rate payable by the Postmaster General for operations other than those specified in this condition.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on ——————; *Provided*, That, before the date on which this certificate would otherwise become effective, the Board, on its own initiative or upon the timely filing of any petition seeking reconsideration of the order issuing this certificate, may by order or orders extend the effective date: *Provided, further*, That the continuing effectiveness of this certificate shall be subject to timely payment by the holder of such license fee as may be prescribed by the Board.

The Civil Aeronautics Board has directed its Secretary to execute this certificate and to affix the Board's seal on the ——————.

——————,
Secretary.

[FR Doc. 79-6317 Filed 3-1-79; 8:45 am]

[6320-01-M]

[Order 79-2-130; Docket 30777]

ORDER TRANS WORLD AIRLINES, INC., FOR CLARIFICATION OF ORDER 78-7-113 ON CREATIVE FARE SALES

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of February, 1979.

On August 15, 1978, Trans World Airlines, Inc. (TWA), filed a petition for clarification of Order 78-7-113, July 21, 1978. That order concerned an International Air Transport Association (IATA) agreement which established normal and promotional fares between various points in Europe and Israel and imposed discriminatory sales restrictions on a number of the inexpensive special or creative fares. The restrictions stipulated that these low fares could not be advertised or sold in the United States,[1] could not be sold in combination with fares to or from the United States,[2] and, in some cases, could not be sold to U.S. citizens here or in Europe because of passport and residency requirements.[3]

Although creative fares are readily available to foreign travelers, and are sold by both U.S. and foreign carriers abroad, the IATA restrictions make the fares almost completely inaccessible to U.S. consumers. As a result, of course, most U.S.-originating passengers have had no choice but to pay higher fares for the same foreign air services.

In Order 78-7-113, we found these restrictions discriminatory and adverse to the public interest. We disapproved the Europe-Israel agreement insofar as it included such provisions, and we attached a condition to our previous approval of the IATA ratemaking machinery to make it possible for carriers and travel agents to offer creative fares without the IATA restrictions.[4] Our action excluded these discriminatory sales practices from antitrust immunity under section 414 of the Act, and enabled carriers and travel agents to advertise and sell creative fares free of these discriminatory restrictions ("unrestricted creative fares") without fear of IATA enforcement penalties.

Subsequently, in Orders 78-8-27, August 4, 1978, 78-10-36, October 6, 1978, 78-10-114, October 25, 1978, and 78-11-148, November 30, 1978, among others, we approved several additional IATA agreements on creative fares within Europe, the Middle East, Africa, and the Western Hemisphere, subject to the same condition. In each case, we invited the carriers to file creative fare tariffs with the Board, and encouraged both carriers and travel agents to market the fares within the United States.

In its petition for clarification, TWA states that it fully supports the Board's efforts to make these bargain fares available to U.S.-originating passengers and to U.S. citizens abroad, but is reluctant to advertise and sell unrestricted creative fares without some assurance that foreign governments will permit such sales and that foreign carriers will honor the tickets; if foreign carriers or governments decide to enforce the IATA sales restrictions, U.S. citizens may find themselves stranded abroad, denied boarding, or required to pay higher fares, and U.S. carriers which sell the fares without restrictions may face government sanctions; specifically, if a foreign government refuses to allow such sales, it may be consistent with country-of-origin principles for a U.S. carrier to sell the fares in the United States for through travel to and from that foreign country, but a carrier which disregards the restrictions on creative fare sales within a foreign jurisdiction may risk punitive action. TWA suggests that, before the carriers actively market the fares, the Board and the Department of State take steps on the diplomatic front to obtain at least some assurances from the foreign governments involved that the tickets will be honored.

TWA also requests clarification of the extent of the Board's action in Order 78-7-113. The Board clearly disapproved the IATA restrictions on creative fares sold for part of a through trip to or from the United States; TWA asks whether that disapproval also applies to creative fares sold separately, for use only in local, intra-European service; whether the jurisdictional touchstone in that case would be U.S. citizenship, rather than an impact on air transportation in a statutory sense; and whether the Board might not have achieved much the same result (withdrawal of antitrust immunity) by simply disclaiming jurisdiction over creative fares sold exclusively for local transportation within Europe.

We welcome TWA's interest in making the creative fares available, and appreciate its concern for the welfare of consumers who seek to use

[1] Under the agreement, each special or creative fare could be advertised and sold only in the countries from which it applied; a France-Israel fare, for example, could be sold only in France and Israel. Since none of the fares applied from the United States, none could be advertised or sold here.

[2] None of the special fares could be sold in combination with fares to or from a third country; a passenger planning a U.S.-Europe-Israel trip could not buy a through ticket combining a transatlantic fare to or from London, for instance, with a low creative fare between London and Tel Aviv.

[3] The residency requirements specified that the fares could be sold only to passengers who could present a passport, signed residency certificate, or other proof of long-term residence in the country from which the fare applied; to be eligible for a Paris-Tel Aviv fare, for example, a traveler would have to show a French or Israeli passport or residency certificate. Obviously, very few U.S. citizens could meet this requirement. A knowledgeable traveler could circumvent the first two restrictions by traveling to Europe and buying a separate creative fare ticket there, for the intra-European portion of the trip; but where a residency restriction applies, it would prevent even that indirect access.

[4] Specifically, the condition we attached to IATA Resolution 001 (Permanent Effectiveness Resolution) states that no provision of any IATA resolution or any air tariff filed with the Board shall prevent any agent or air carrier from advertising or selling a ticket for air transportation between foreign points: (1) at a location within the United States; (2) in combination with any fare to or from the United States; or (3) to a U.S. citizen who meets all the travel requirements of the air fare other than the passport or residency requirements.

these low fares.[5] As indicated above, we have repeatedly encouraged the carriers to file creative fare tariffs. We are not suggesting that tariffs filed with the Board are a prerequisite for sales in this country.[6] Rather, we have urged the carriers to file these fares because the tariff mechanism provides the most direct solution to the difficulties TWA raises in its petition for clarification.

First, a creative fare tariff constitutes conclusive evidence of a carrier's willingness to honor such tickets—the strongest assurance that the carrier itself will not enforce the IATA restrictions, and that U.S. passengers using creative or special fares on that airline will not find themselves stranded abroad, denied boarding, or forced to pay higher fares.

Second, filing the fares is one way to determine whether a foreign government will permit sales without the discriminatory IATA restrictions. By Order 78-7-113, we eliminated any risk of IATA enforcement penalties for such sales; we also made it clear that the Board would take no action to enforce the IATA restrictions. The carriers are not exempt, however, from their obligation to comply with lawful government regulations on the sale of fares within a foreign jurisdiction. In any country whose aviation authorities have required or allowed creative fares to be sold under discriminatory restrictions similar to those in the IATA agreement, selling the fares on a non-discriminatory basis would be, in effect, a change in the fares' rules and conditions. Such changes are generally subject to government approval. Consequently, we would advise TWA—and any other interested carrier—to inform the foreign governments involved that it intends to sell creative fares without the restrictions we have disapproved, and, wherever necessary, to file tariffs or give appropriate notice to local authorities in order to eliminate any risk of enforcement action by those governments.

For our part, we will be pleased to accept creative fare tariffs from any U.S. or foreign carrier that wishes to market these fares in the United States. Our primary concern is that these low fares be offered on a non-discriminatory basis to U.S.-originating passengers and to U.S. citizens abroad. The tariff mechanism offers the most direct method of accomplishing this, and we encourage the carriers to use it.[7]

TWA also raises a technical, jurisdictional question about our disapproval of the agreement rather than disclaimer of jurisdiction. Any IATA agreement affecting air transportation is, of course, subject to Board approval. As we indicated in Order 78-7-113, there is no question that the discriminatory IATA restrictions affect air transportation. Our disapproval of an IATA agreement, resolution, or specific provision with a resolution (e.g., the creative fare restrictions) nullifies that agreement, resolution, or provision with respect to transportation to and from the United States and U.S. territories, bars U.S. carrier adherence thereto, and excludes the specified practices from antitrust immunity. As a result of our disapproval of the IATA sales restrictions and our conditioning of the IATA ratemaking machinery, any agreement or concerted action among carriers to restrict creative or special fares against application in air transportation—in particular, to restrict the combinability of these discount fares with fares to and from the United States—is stripped of antitrust immunity. In these circumstances, carriers may be subject to antitrust action for refusing to sell unrestricted creative or special fares in the United States for local travel between foreign points or for through travel between the United States and foreign points.

Absent agreements or other antitrust implications, however, we do not have jurisdiction over every foreign air fare a U.S. citizen may use or seek to use. We trust that foreign governments will find it in their interest to prevent discrimination against U.S. citizens in the sale of foreign air services, just as we prohibit unjust discrimination on fares and services within our jurisdiction, and we expect that foreign governments will work with us to remedy the present inequity by permitting TWA and other carriers to revise their creative fare rules. But we cannot compel foreign governments to eliminate the IATA restrictions on creative or special fares which fall exclusively within foreign jurisdictions, i.e., fares which by their approved terms are not combinable with fares to and from the United States.

Creative or special fares sold exclusively for local service between foreign points, and not as part of a through trip to or from the United States, come within the jurisdiction of the countries from which the fares apply.[8] The carriers would risk neither IATA nor Board enforcement penalties for disregarding the discriminatory restrictions in order to sell such local fares in the United States or to U.S. citizens abroad, but could be subject to enforcement action by foreign governments which have not approved unrestricted creative fare sales. We recommend, therefore, that carriers interested in marketing strictly local; creative fares in the United States file revised creative fare rules with the appropriate foreign aviation authorities. Similarly, where passport or residency restrictions now prohibit sales of local creative fares to U.S. citizens, the necessary rule changes should be filed with the foreign governments involved in order to ensure U.S. citizens both here and abroad access to these local fares on a nondiscriminatory basis.[9]

To make creative fares available in combination with connecting fares to and from the United States (1) for through travel to the United States from a foreign country (i.e., for traffic originating abroad), and (2) for through travel from the United States via countries with which we do not have bilateral aviation agreements that stipulate liberal pricing rules, interested carriers should file revised creative fare rules with the foreign governments concerned and proceed to offer the fares without the discriminatory restrictions. As TWA notes, creative fares sold for through transportation under these circumstances may be subject to competing jurisdictional claims. In our view, carriers and agents may advertise and sell unrestricted creative fares for through service between the United States and foreign points as freely as any other combinable foreign fares. A foreign government which chose to maintain the IATA combinability restriction, however, could conceivably contend that by its definition the creative fares are not combinable, do not affect air transportation as defined by the Act, and therefore fall exclusively within its own jurisdiction, not ours. In many cases, simply filing the necessary rule changes with the authorities involved

[5] TWA is, of course, in a particularly good position to introduce creative fare sales in the United States, since TWA not only serves an extensive network of international routes, but is a member of the IATA Creative Fares Board/Europe.

[6] Many combinable intra-European fares, including normal economy fares, are now sold here for foreign segments of through U.S.-Europe air transportation without specific tariffs on file with the Board, and creative or special fares may also be sold this way.

[7] Filing creative fare tariffs is also the simplest way to ensure that U.S. travel agents have all the information they need to write the tickets—an important consideration, since so many U.S. passengers arrange their foreign travel plans through travel agents. As a practical matter U.S. agents will not be able to market creative fares until carriers either file tariffs with the Board or otherwise provide them with enough information to issue the tickets correctly.

[8] As indicated above, however, any concerted action to restrict the sale of local creative fares in the United States may leave the carriers liable to U.S. antitrust laws, even if the fares themselves have no direct application in air transportation under the Federal Aviation Act.

[9] Some creative and special fares have no passport or residency requirements, and can be sold to U.S. citizens abroad for local travel between foreign points even under the restrictive IATA rules.

will be sufficient to remove any ambiguity about the legal status of creative and special fares sold in combination with fares to and from the United States. Only if a foreign government rejects the rule changes might intergovernmental discussions be required. In any case, the carriers themselves must initiate the process by taking whatever action may be necessary to ensure that these fares are readily available for through service to and from the United States.

As we stated in Order 78-7-113, promotional fares to and from the United States are available to foreign travelers without restriction. We see no justification for denying U.S. consumers equal access to foreign discount fares. In the starkest terms, the IATA creative fare restrictions constitute a pricing policy of sheer economic exploitation, designed to bolster carrier revenues by extorting higher fares from U.S. passengers for the same air services foreign travelers obtain at attractive discount prices. Both carriers and governments may find that the restrictions prove self-defeating as well; the fares have received considerable publicity since we issued our initial order, and travelers who are aware that these low fares exist are not likely to be indifferent to such discriminatory treatment.

While we hope that foreign governments will assist us in removing the abjectionable IATA restrictions, carriers need not wait for foreign government approval before selling combined creative fares to U.S.-originating passengers under the liberal rate articles incorporated in our more recent bilateral aviation agreements.[10] Unrestricted creative fare sales in the United States, for through travel, are entirely consistent with these liberal pricing articles and, in our view, with the principles of non-discrimination generally included in all international aviation treaties and protocols. Where liberal pricing articles are in effect, we consider carriers and agents free to advertise and sell combined creative fare tickets to U.S.-originating passengers with no risk of adverse action by foreign governments. TWA, for example, may market these fares in the United States for through service on its own lines immediately. In our opinion, TWA may likewise sell combined creative fares for through travel to offline points wherever such fares are in effect from countries with which we have negotiated liberal bilateral agreements. In general, carriers and agents may offer creative or special fares to U.S.-originating passengers for through air transportation via any country with which we have a liberal rate agreement, and for service on any carrier, U.S. or foreign, which has filed creative fare tariffs with the Board or otherwise indicated its willingness to honor the tickets. We would recommend that the carriers inform foreign governments that they are making these fares available on a nondiscriminatory basis, but in our judgment specific foreign government approval is not a prerequisite for combined creative fare sales to U.S.-originating passengers, under a liberal pricing article. Indeed, we expect TWA and the other U.S. carriers which serve international routes to begin offering creative and special fares to U.S. passengers as soon as possible. Delay in marketing the fares within the United States serves only to deny consumers the benefit of these low prices and prolong the discriminatory impact of the restrictive IATA rules.

ACCORDINGLY,

1. Except to the extent granted herein, we hereby dismiss the petition of Trans World Airlines, Inc., in Docket 30777; and

2. We shall serve copies of this order upon Trans World Airlines, Inc., American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., and Pan American World Airways, Inc.

We shall publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[11]
Secretary.

[FR Doc. 79-6314 Filed 3-1-79; 8:45 am]

[10] Pricing articles which specify either country-of-origin rules (e.g., out agreements with Germany and the Netherlands) or mutual suspension procedures (e.g., our agreements with Belgium and Israel) are considered liberal rate articles and would, in our view, permit unrestricted creative fare sales as outlined here.

[11] All Members concurred.

[6335-01-M]

COMMISSION ON CIVIL RIGHTS

ALASKA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Alaska Advisory Committee (SAC) of the Commission will convene at 9:00 am and will end at 11:00 am on March 16, 1979, Anchorage Westward Hilton, 500 W. 3rd Avenue, Anchorage, Alaska.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northwestern Regional Office of the Commission, 915 Second Avenue, Room 2852, Seattle, Washington 98174.

The purpose of this meeting is for the subcommittee to discuss Cannery Worker's problems.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., February 26, 1979.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 79-6292 Filed 3-1-79; 8:45 am]

[6335-01-M]

ILLINOIS ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Illinois Advisory Committee (SAC) of the Commission will convene at 1:00 p.m. and will end at 5:00 p.m. on March 21, 1979, MWRO Conference Room, 230 South Dearborn, Room 3280, Chicago, Illinois 60604.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Midwestern Regional Office of the Commission, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604.

The purpose of this meeting is an orientation of new Committee members, report and discussion on follow-up of Insurance Redlining Report.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., February 26, 1979.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 79-6293 Filed 3-1-79; 8:45 am]

[6335-01-M]

IOWA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Iowa Advisory Committee (SAC) of the Commission will convene at 10:00 a.m. and will end at 2:00 p.m. on March 20, 1979 in the Ramada Inn Downtown, 929 Third Street, Alameda Room, Des Moines, Iowa 50309.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Central States Regional Office of the Commission, 911 Walnut Street, Room 3103, Kansas City, Mo. 64106.

The purpose of this meeting is to receive reports on current projects and discuss future program plans.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., February 26, 1979.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 79-6294 Filed 3-1-79; 8:45 am]

[6335-01-M]

MARYLAND ADVISORY COMMITTEE

Rescheduled Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Maryland Advisory Committee (SAC) of the Commission originally scheduled for March 13, 1979 has been changed (FR Doc. 79-5300), on page 10528.

The meeting now will be held on April 3, 1979 at 6:30 p.m. and will end at 10:00 p.m. The meeting place will remain the same.

Dated at Washington, D.C. February 26, 1979.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 79-6295 Filed 3-1-79; 8:45 am]

[6335-01-M]

MISSOURI ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Missouri Advisory Committee (SAC) of the Commission will convene at 1:30 p.m. and will end at 3:00 p.m. on March 14, 1979, at 911 Walnut Street, Room 3100, Kansas City, Missouri 64106.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Central States Regional Office of the Commission, 911 Walnut Street, Room 3103, Kansas City, Missouri 64106.

The purpose of this meeting is a follow-up to the metropolitan desegregation study.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., February 26, 1979.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 79-6296 Filed 3-1-79; 8:45 am]

[6335-01-M]

NEW HAMPSHIRE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the New Hampshire Advisory Committee (SAC) of the Commission will convene at 12:00 noon and will end at 2:00 p.m. on March 20, 1979, in the Howard Johnson, Manchester, New Hampshire.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., February 26, 1979.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 79-6297 Filed 3-1-79; 8:45 am]

[6335-01-M]

OHIO ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given that, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Ohio Advisory Committee (SAC) of the Commission will convene at 10:00 a.m. and will end at 3:00 p.m. on March 24, 1979, I-70 and St. 256, Box 346, Reynoldsburg, Ohio 43068.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Midwestern Regional of the Commission, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604.

The purpose of this meeting is to have an update on Police/Community Relations and a final discussing of potential members to the Committee.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., February 26, 1979.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 79-6298 Filed 3-1-79; 8:45 am]

[6335-01-M]

SOUTH DAKOTA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the South Dakota Advisory Committee (SAC) of the Commission will convene at 9:30 a.m. and will end upon completion on March 23, 1979, at the Civil Defense Room, State Capitol Building, Pierre, South Dakota 57501.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission, 1405 Curtis Street, Denver, Colorado 80202.

The purpose of this meeting is to have orientation for new Committee members and plan for future activities.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., February 26, 1979.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 79-6299 Filed 3-1-79; 8:45 am]

[6335-01-M]

WYOMING ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Wyoming Advisory Committee (SAC) of the Commission will convene at 11:00 a.m. and will end at 3:00 p.m. on March 17, 1979, in the Sullivan Room, Natrona County Library, Second and Durbin, Casper, Wyoming.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission 1405 Curtis Street, Denver, Colorado 80202.

The purpose of this meeting is to explain Commission procedures to members of rechartered Committee. Discuss strategies for project on educational opportunities in energy impacted counties in Wyoming.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., February 26, 1979.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 79-6300 Filed 3-1-79; 8:45 am]

[3510-25-M]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

RESEARCH FOUNDATION OF S.U.N.Y., ET AL.

Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments

The following is a consolidated decision on applications for duty-free entry of accessories for foreign instruments pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301). (See especially Section 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, NW., Washington, D.C. 20230.

DOCKET NUMBER: 78-00238. APPLICANT: Research Foundation of S.U.N.Y. at Stony Brook, State University of New York at Stony Brook, Department of Materials Science, Stony Brook, N.Y. 11794. ARTICLE: Sets of parts and accessories for U.V. monochromator Subassembly. MANUFACTURER: Bird and Tole, Ltd., United Kingdom. INTENDED USE OF ARTICLE: The articles are accessories to an existing monochromator being used for studies of metals and semiconductors during investigations of electronic energy structure. The experiments to be conducted will consist of photoelectron spectroscopy in the wavelength range 100-800 Angstroms with 1-percent resolution using a monochromator which is integral with the sample chamber. In addition, the article will be used for graduate training in scientific research. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: September 14, 1978. ADVICE SUBMITTED BY THE NATIONAL BUREAU OF STANDARDS ON: January 26, 1979.

DOCKET NUMBER: 78-00442. APPLICANT: The Regents of the University of California, Department of Pathology, UCSF Medical Center—595HSW, San Francisco, Calif. 94143. ARTICLE: ASID-4D Ultra High Resolution Scanning System for JEOL 100CX EM and accessories. MANUFACTURER: JEOL Ltd., Japan. INTENDED USE OF ARTICLE: The article is an accessory to an existing electron microscope manufactured by the same manufacturer which is being used for diagnosis of many renal, hepatic, and lymphoproliferative disease, for identification of certain poorly differentiated neoplastic cells of origin, and for identification of viral particles, and certain environmental elements in lungs and livers of the affected patients. Experiments to be conducted will include indentification of ultrastructural components of cells and/or morphological correlation to metallic elements. The article will also be used as an instructional tool for graduate students in the Department of Pathology and also for house staff (residents). APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: September 27, 1978. ADVICE SUBMITTED BY THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE ON: January 18, 1979.

DOCKET NUMBER: 79-00023. APPLICANT: Unversity of Maryland, College Park, Md. 20742. ARTICLE: Rheovibron Conversion Kit. MANUFACTURER: Toyo Baldwin Co., Ltd., Japan. INTENDED USE OF ARTICLE: The article is intended to be used in experiments involving the preparation of polymeric blends in a Brabender blender followed by the preparation of a film of the material by heating the blend under pressure in a laboratory press. After various thermal treatments as well as some structural measurements by other techniques the film is inserted directely into the sample chamber of the Rheovibron. The objectives of this investigation are to study molecular and phase interaction in polymer blends and to determine the compatibility of specific blends of hompolymers and copolymers produced from them. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: October 16, 1978. ADVICE SUBMITTED BY THE NATIONAL BUREAU OF STANDARDS ON: January 23, 1979.

COMMENTS: No comments have been received with respect to any of the foregoing applications. DECISION: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for the purposes for which the articles are intended to be used, is being manufactured in the United States. REASONS: The applications relate to compatible accessories for instruments that have been previously imported for the use of the applicant institutions. The articles are being manufactured by the manufacturers which produced the instruments with which they are intended to be used. We are advised by the National Bureau of Standards and the Department of Health, Education, and Welfare in the respectively cited memoranda that the accessories are pertinent to the applicant's intended uses and that it knows of no comparable domestic articles.

The Department of Commerce knows of no similar accessories manufactured in the United States which are interchangeable with or can be readily adapted to the instruments with which the foreign articles are intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director,
Statutory Import Programs Staff.

[FR Doc. 79-6218 Filed 3-1-79; 8:45 am]

[3510-25-M]

TRUSTEES OF COLUMBIA UNIVERSITY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

DOCKET NUMBER: 79-00046. APPLICANT: Trustees of Columbia University in the City of New York, 315 Havemeyer Hall, Columbia, University, New York, New York 10027. ARTICLE: TEA CO_2, laser Model DD-250 and accessories. MANUFACTURER: Gen Tec Inc., Canada. INTENDED USE OF ARTICLE: The article is intended to be used for the study of multiphoton dissociation properties of CF_3I, CF_3Br, and other similar gases. Investigations will be conducted to determine the usefulness of infrared lasers as a source of catalysis in chemical reactions. The article will also be used in independent scientific research projects by graduate students in the area of multiphoton infrared photochemistry.

COMMENTS: No comments have been received with respect to this application. DECISION: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

REASONS: The foreign article provides a variable (0.1-250 pulses per second) repetition rate and is capable of providing at least 0.8 Joules/pulse at maximum repetition rate. The National Bureau of Standards advises in its memorandum dated February 9, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director,
Statutory Import Programs Staff.

[FR Doc. 79-6217 Filed 3-1-79; 8:45 am]

[3510-15-M]

Maritime Administration

[Docket No. S-638]

PARTICIPATION BY VESSEL BUILT WITH CONSTRUCTION-DIFFERENTIAL SUBSIDY IN THE CARRIAGE OF ALASKAN OIL IN THE DOMESTIC TRADE

Application by Gulf Oil Corp.

Notice is hereby given that Gulf Oil Corporation has filed an application for written permission under section 506 of the Merchant Marine Act, 1936, as amended (the Act), for its vessel, the SS *American Spirit*, to make a second voyage in the Alaska/Panama oil trade.

The *American Spirit* is a VLCC of 262,376 DWT, built with construction-differential subsidy. The vessel is under charter to the Sohio Natural Resources Company and is currently engaged on a single voyage in the Alaska/Panama oil trade. The requested second voyage of the *American Spirit* would be a direct continuation of the first voyage, permission for which was granted by the Maritime Administration on January 23, 1979. Loading for the second voyage would commence at Valdez, Alaska on or about March 23, 1979. The voyage would be made in accordance with the provisions of section 506 of the Act and the regulations in Part 250 of Chapter II, Title 46, of the Code of Federal Regulations.

Interested parties may inspect the application in the Office of the Secretary, Maritime Administration, Room 3000-B, Department of Commerce Building, 14th and E Streets, NW, Washington, D.C. 20230.

Any person, firm, or corporation who is a "competitor," as defined in Part 250.2 of the aforementioned regulations as published in the Federal Register issue of June 29, 1977 (42 FR 33035), and desires to protest such application should submit such protest in writing, in triplicate, to the Secretary, Maritime Administration, Washington, D.C. 20230. Protests must be received within five working days after the date of publication of this Notice in the FEDERAL REGISTER. If a protest is received, the applicant will be advised of such protest by telephone or telegram and will be allowed three working days to respond in a manner acceptable to the Assistant Secretary for Maritime Affairs. Within five working days after the due date for the applicant's response, the Assistant Secretary will advise the applicant, as well as those submitting protests of the action taken, with a concise written explanation of such action. If no protest is received concerning the application, the Assistant Secretary will take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.500 Construction-Differential Subsidies (CDS)).

By Order of the Assistant Secretary for Maritime Affairs.

Dated: February 27, 1979.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 79-6403 Filed 3-1-79; 8:45 am]

[3510-22-M]

National Oceanic and Atmospheric Administration

MARINE MAMMALS

Receipt of Applications for General Permits

Notice is hereby given that the following applications have been received to take marine mammals incidental to the course of commercial fishing operations within the U.S. Fishery Conservation Zone, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the regulations thereunder.

Odra, Swinoujscie, Poland, has applied for a Category 1: "Towed or Dragged Gear" general permit.

Dalmor, Gdynia, Poland, has applied for a Category 1: "Towed or Dragged Gear" general permit.

The applications are available for review in the office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

Interested parties may submit written views on this application with 30 days of the date of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235.

Dated: February 27, 1979.

DR. WILLIAM ARON,
Director, Office of Marine Mammals and Endangered Species.

[FR Doc. 79-6395 Filed 3-1-79; 8:45 am]

[6820-33-M]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1979

Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to Procurement List 1979 a service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 4, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following service to Procurement List 1979, November 15, 1978 (43 FR 53151):

SIC 7349

Janitorial/Custodial Service,
Department of Transportation Systems Center,
Kendall Square,
Cambridge, Massachusetts.

C. W. FLETCHER,
Executive Director.

[FR Doc. 79-6243 Filed 3-1-79; 8:45 am]

[6820-33-M]

PROCUREMENT LIST 1979

Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to Procurement List 1979 commodities to be produced by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 4, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1979, November 15, 1978 (43 FR 53151):

CLASS 7530

Folder, File, 57530-00-286-8571, 7530-00-286-7286.
Folder Set, File, 7530-00-286-7080, 7530-00-286-7244, 7530-00-286-7253, 7530-00-286-7287, 7530-00-286-8570.

C. W. FLETCHER,
Executive Director.

[FR Doc. 79-6244 Filed 3-1-79; 8:45 am]

[3710-08-M]

DEPARTMENT OF THE ARMY

NATIONAL BOARD FOR THE PROMOTION OF RIFLE PRACTICE

Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of committee: Executive and Budget Committees of the National Board for the promotion of Rifle Practice (NBPRP) (Joint Session).

Date of meeting: March 29, 1979.
Place: Secretary of the Army Conference Room, Room 2E687, the Pentagon.
Time: 0900 Hours.

PROPOSED AGENDA

1. Status of Suit against the Secretary of the Army and the Director of Civilian Marksmanship (DCM).
2. Modification/Expansion of NBPRP-approved DCM Ammunition sales program.
3. NBPRP support for a Civilian Pistol Marksmanship Program.
4. Possible expansion of Board-sponsored National Match events.
5. Implementation of additional recommendations from the A. D. Little report.
6. Possible NRPRP Inter-Service Marksmanship responsibility.
7. Concept of a National Shooting Facility.
8. Unauthorized modification of M-14 Rifle for board sponsored competitions.
9. Development of Program Objectives.
10. NBPRP five-year program.
11. Possible change to AR 920-20 to reestablish enrollment of Senior Clubs and their support through the DCM sales program.
12. Recommendation concerning board terms.

This meeting is partially closed to the public since the NBPRP is currently the subject of a civil suit. The Office of the Army General Counsel has advised that public disclosure of the case particulars may interfere with the ability of the Army to effectively participate in the defense of the interests of the United States; (5 U.S.C. Sec. 552b(c)(10).

Business requiring closure will be conducted immediately after convening the meeting.

Persons desiring to attend the meeting should contact the Office of the Director of Civilian Marksmanship (202) 693-6460 prior to 29 March 1979 to arrange entry into the Pentagon.

Persons unable to make prior arrangements should call 55542 or 54025 upon arrival at the Pentagon.

For the director.

GARY CHITTESTER,
Executive Officer.

[FR Doc. 79-6204 Filed 3-1-79; 8:45 am]

[3810-70-M]

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DEFENSE SCIENCE BOARD TASK FORCE ON EMP HARDENING OF AIRCRAFT

Meeting

The Defense Science Board Task Force on EMP Hardening of Aircraft will meet in closed session 22-23 March 1979 at the Lawrence Livermore Laboratory, Livermore, CA.

The mission of the Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research & Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

The Task Force will review hardening of U.S. aircraft against EMP and related subjects and will provide recommendations for appropriate actions.

In accordance with 5 U.S.C. App. I § 10(d)(1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C., § 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services Department of Defense.

FEBRUARY 27, 1979.

[FR Doc. 79-6310 Filed 3-1-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

LIVERMORE SITE, LIVERMORE, CALIF.

Public Hearing on Draft Environmental Impact Statement (DOE/EIS-0028-D)

The Department of Energy issued the draft Environmental Impact Statement, Livermore Site (DOE/EIS-0028-D) in September 1978, for public review and comment, with a three-month comment period. The draft Environmental Impact Statement (DEIS) was prepared in compliance with the National Environmental Policy Act (NEPA) to assess the environmental impact of continued operation of the Lawrence Livermore and Sandia Laboratories located in Alameda County near Livermore, California. The EIS assesses the potential cumulative environmental impacts associated with the current site activities, including the operation of the laboratories, and with the alternatives to current operations at that site.

Notice is hereby given that DOE will conduct a public hearing in connection with the draft statement commencing at 9:00 a.m. on April 12, 1979, at the Granada High School Auditorium, 400 Wall Street, Livermore, California.

The purpose of the hearing is to afford further opportunity for public comment regarding the DEIS. In order to sharpen and focus the major issues for discussion and examination at the hearing, DOE will make available a staff statement summarizing and addressing the substantive areas of concern raised in the written comments received on the DEIS.

The areas of concern include: (1) Mission and location of the laboratories; (2) health effects and dose calculations; (3) seismology and hydrology; (4) emergency plans; (5) environmental monitoring analysis and standards; (6) accident analysis and central systems; (7) transport of radioactive materials in the environment; and (8) transportation of radioactive materials.

The above issues and other issues raised at the hearing will be addressed and appropriate revisions made in the EIS, which is expected to be issued later this year in final form.

The hearing will be conducted by a three-person Presiding Board selected by DOE. The Chairman of the Board and one other member of the Board will consititute a quorum. The Chairman of the Board will be Mr. John Farmakides, an administrative law judge who is Chairman of the Contract Appeals Board at DOE. The other two members of the Board are Dr. L. Trowbridge Grose, Professor of Geology at the Colorado School of Mines, and Dr. G. Victor Beard, Physical Chemist and Professor of Nuclear Engineering, at the University of Utah.

Persons, organizations, or governmental agencies wishing to appear and make a presentation are encouraged to become "full participants" in the proceedings by filing with Mr. W. H. Pennington, Deputy Director, Office of Environmental Compliance and Overview, U.S. Department of Energy, Mail Station E-201, Washington, D.C. 20545, (301) 353-3034, not later than 5 p.m., EST, on April 5, 1979, a notice of intent to participate. The notice shall set forth: (1) The name and address of the participant and his representative, if any; (2) the nature of the participant's interest in the proceeding; (3) the text of any statements to be presented at the hearing, or a reasonably detailed summary thereof; (4) the names and addresses of all witnesses to be produced at the hearing by the participant and a summary of the substance of the proposed testimony; and (5) the amount of time desired to complete the presentation. The Presiding Board will endeavor to schedule the full amount of time requested by full participants (those who file a notice of intent to participate) subject to the imposition of such reasonable time limits as are consistent with orderly procedures and as will assure other full participants a meaningful opportunity to present their views.

Persons, organizations, or governmental agencies wishing to participate, but who do not file a notice by 5 p.m., EST, on April 5, 1979, may notify Mr. Pennington before the hearing or the Presiding Board during the hearing of their desire to make a presentation. Such parties shall be admitted as "limited participants" and shall be heard at such times as the Presiding Board shall permit for a period of not more than 15 minutes each, unless the Presiding Board, in its discretion, allows additional time.

The public hearing will be legislative rather than adjudicatory in nature. Discovery, subpoena of witnesses, cross-examination of participants, testimony under oath and similar formal procedures appropriate to a trial-type hearing will not be provided. Participants will reference and produce, on request of the Presiding Board, the documents on which they rely.

DOE will make available appropriate witnesses to explain the background, purpose and environmental impacts of the laboratories at Livermore and to respond to appropriate questions. Questions may be posed to participants (including DOE staff members) during the course of the hearing by other participants (including DOE staff members) and the Presiding Board, either orally or in writing, provided that: (a) All questioning shall be subject to the control and discretion of the Presiding Board, (b) questions shall be permitted from limited participants only to the extent that they are relevant to the issues identified in the staff statement, unless the Presiding Board determines that additional questions are necessary to develop an adequate record, and (c) any participant (including DOE staff members) may elect to answer any such questions either orally at the hearing or in a written submittal to be filed with the Presiding Board before the close of the hearing record, which date shall be determined by the Board.

A transcript of the hearing will be made. The Record of the hearing shall consist of the transcript, and all documents received into the record by the Presiding Board.

After the close of the hearing record, the Presiding Board shall render its Report. The Report shall be based upon the Presiding Board's review of the DEIS and the hearing record and shall: (a) Identify those unresolved issues raised at the hearing which the Presiding Board deems to be critical to future decisions concerning the operations and reasonable alternatives, and (b) present the recommendations of the Presiding Board concerning the treatment of these issues in the final environmental impact statement in a manner which will assure informed decisionmaking. In discharging its responsibilities, the Presiding Board shall not undertake to resolve issues or render judgment concerning the operations.

The Record and the Board Report will be fully considered and taken into account in the preparation of the final environmental impact statement and in making decisions. The Record and the Board Report will be made available for public inspection at the locations noted below as soon as practical after the close of the hearing. Copies of the DEIS, the formal comments received, and the staff statement are available for public inspection at the DOE public document rooms located at:

Public Reading Room, FOI, Room GA-152, Forrestal Building, 1000 Independence Ave., SW., Washington, D.C.

Albuquerque Operations Office, National Atomic Museum, Kirtland Air Force Base East, Albuquerque, New Mexico.

Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois.

Chicago Operations Office, 175 West Jackson Boulevard, Chicago, Illinois.

Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho.

Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada.

Oak Ridge Operations Office, Federal Building, Oak Ridge, Tennessee.

Richland Operations Office, Federal Building, Richland, Washington.

Energy Information Center, 215 Fremont Street, San Francisco, California.

Savannah River Operations Office, Savannah River Plant, Aiken, South Carolina.

In addition, the above documentation will also be available for public inspection at the Visitor's Center at the Lawrence Livermore Laboratory.

Copies of the staff statement can be obtained from Mr. Pennington, the Energy Information Center in San Francisco, or the Visitor's Center at the Lawrence Livermore Laboratory.

Dated at Washington, DC this 27th day of February 1979.

For the United States Department of Energy.

RUTH C. CLUSEN,
Assistant Secretary for Environment.

[FR Doc. 79-6238 Filed 3-1-79; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1068-1; OPP-60006]

INTENT TO HOLD A HEARING TO DETERMINE WHETHER OR NOT THE REGISTRATIONS OF CERTAIN USES OF PESTICIDE PRODUCTS CONTAINING DIBROMOCHLOROPROPANE (DBCP) SHOULD BE CANCELLED, AND STATEMENT OF ISSUES

I. INTRODUCTION

A. *Background* The Agency is currently engaged in adjudicatory hearings under § 6(b)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended ("FIFRA") (7 U.S.C. § 136 *et seq.*) concerning the Agency's proposed cancellation of all uses of pesticide products containing dibromochloro- propane ("DBCP") (In Re: Shell Oil Company, et al., FIFRA Docket Nos. 401 et al.). The proposed cancellation actions were set forth in the Amended Notice of Intent to Cancel. Registrations of Pesticide Products Containing Dibromochloropropane (DBCP), and

Statement of Reasons (43 FR 40911, September 13, 1978) (the "Amended Notice"), which I issued at the conclusion of the Agency's Rebuttable Presumption Against Registration ("RPAR") review of the risks and benefits associated with the uses of DBCP.[1]

The Amended Notice embodied my determination[2] that the use of DBCP on 23 identified crops poses risks which are greater than the social, economic and environmental benefits of those uses, and that those uses of DBCP will therefore generally cause unreasonable adverse effects on the environment when used in accordance with commonly recognized practice. Accordingly, I proposed to unconditionally cancel those uses of DBCP.[3]

I also determined that all remaining uses of DBCP pose risks which are greater than the social, economic, and environmental benefits of those uses, unless risk reductions are accomplished by modifications in the terms and conditions of registration; and that, unless specific changes in the terms and conditions of registration are accomplished, those uses of DBCP will generally cause unreasonable adverse effects on the environment when used in accordance with widespread and commonly recognized practice, and the labeling of DBCP products for those uses will not comply with the provisions of FIFRA. Accordingly, I proposed to cancel the registrations of DBCP products for all those other end uses *unless* the terms and conditions of registration for those uses reflect the specific restrictions described in the Amended Notice. (This latter action will be referred to as the "conditional cancellation" action.)

In response to the Amended Notice, a coalition of farmworkers, migrant farmworker organizations, and public interest groups (collectively referred to here as "Carlos Amaya" or "Amaya") timely objected to, and requested a hearing on, the conditional cancellation action. In summary, Carlos Amaya contends that all uses of DBCP should be unconditionally cancelled, and that, in any event, the restrictions proposed in the Amended Notice for the conditionally cancelled uses are inadequate to protect farmworkers against various risks posed by those uses of DBCP.

Carlos Amaya's objections raised a question concerning the nature of the relief which could be granted by the Administrator at the conclusion of those proceedings with respect to the uses which were only proposed to be conditionally cancelled in the Amended Notice. Specifically, the question was whether at the conclusion of the hearing the Administrator could unconditionally cancel a use which was only proposed to be conditionally cancelled, or could conditionally cancel it subject to modifications to the terms and conditions of registration more restrictive than those which were proposed in the Amended Notice. The parties were given the opportunity to file briefs concerning this issue, and it was argued at length at the prehearing conference held on December 13, 1978.[4]

On January 18, 1979, Administrative Law Judge ("ALJ") Harwood issued an Order and Opinion Allowing Objections Filed by Carlos Amaya, Et Al. (the "Order and Opinion"). The Order and Opinion concluded (p. 15):

> • • • that Carlos Amaya's objections are entirely proper under the Statute, that they should be heard on their merits, and if justified by the record, an order may be entered cancelling registrations or containing restrictions and conditions of use beyond those proposed in the notice of intent to cancel.

B. *The Present Notice* As discussed more fully below in Part II, I believe that this conclusion of the Order and Opinion is erroneous.[5]

However, as a separate matter, I have carefully reviewed Carlos Amaya's objections and the issues which they raise. I have determined that they are not frivolous and that they warrant serious consideration, especially since they rely in part on new data which was not available for review or analysis during the RPAR. Further, I have also considered the fact that the Agency's Final Position Document, which concluded the RPAR, was issued without any opportunity for public comment.[6]

Although I do not believe that the lack of such opportunity has any legal effect on the rights of persons to request hearings under § 6(b), nor on the range of relief which may be granted at the conclusion of any such hearing, I do believe that the Agency's decision-making should be based upon the best available information and that all persons should have access to the Agency to make their views known on all issues under consideration before a final regulatory proposal is promulgated. Indeed, the RPAR process was designed to facilitate such access to the Agency and to provide the Agency with all interested views in a timely and meaningful fashion. But in this instance, neither the RPAR notice nor the Original Notice explicitly stated

---

[1] The RPAR process is set out in 40 CFR § 162.11.

[2] In the original Notice of Intent to Cancel the Registrations or Change the Classification of Pesticide Products Containing Dibromochloropropane (DBCP) and Statement of Reasons (42 FR 57545, November 3, 1977) (the "Original Notice"), the Administrator delegated to me the authority to review and evaluate the evidence concerning DBCP submitted to the Agency during the RPAR review of DBCP, and to issue, if appropriate, an Amended Notice.

[3] On January 22, 1979, the Administrative Law Judge ("ALJ") presiding in those proceedings ruled that 22 of those uses are now cancelled by operation of law because no timely objections were filed in opposition to their proposed cancellation. *Order Denying (1) Motion of Amvac Chemical Corporation To Amend Its Objections To Include All Cancelled Uses and (2) Cross Motion Of Respondent To Dismiss Amvac As A Party*, p. 9. The 22 cancelled uses are: broccoli, brussels sprouts, cabbage, carrots, cauliflower, celery, cucumbers, eggplant, endive, lettuce, lima beans (except commercial uses), melons, okra (except commercial uses), parsnips, peanuts, peppers, radishes, snap beans (except commercial uses), southern peas (except commercial uses), squash, turnips, and strawberries (except nursery stock which is not allowed to fruit until after being transplanted). The ALJ also ruled that a hearing was timely requested and objections were timely filed in opposition to the proposed unconditional cancellation of DBCP for use on tomatoes.

[4] As Respondent in those proceedings, I took the position that Carlos Amaya can be "adversely affected" by the Amended Notice based on a belief that the terms of the proposed conditional cancellation are inadequate, and that he is therefore entitled to request a hearing under § 6(b) of FIFRA concerning his objections to that proposal. I also maintained that Carlos Amaya may properly introduce evidence into the record of the hearing which is relevant to the issues raised by his objections. I asserted, however, that if the Administrator is persuaded on the basis of the record generated at the hearing that actions more restrictive than those proposed are warranted, the Administrator may not, in the current procedural posture of that proceeding, take those more restrictive actions; rather, the proper remedy will be for the Administrator, in accordance with § 6(d) of FIFRA, to revoke the Amended Notice and to issue a new notice proposing the more restrictive action.

[5] On January 29, 1979, pursuant to the request of the Pineapple Growers Association of Hawaii and the State of Hawaii, the ALJ certified the Order and Opinion for appeal to the Administrator in accordance with 40 CFR § 164.100. On February 2, 1979, the Acting Judicial Officer issued an Order Allowing Submission of Briefs on Interlocutory Appeal. However, since the issues raised on that appeal are now moot at the result of this Notice, I am submitting a pleading to the Acting Judicial Officer which requests that the appeal be dismissed.

[6] Ordinarily, a draft notice of intent and accompanying Position Document 2/3 is referred to the United States Department of Agriculture (USDA) and the Agency's Scientific Advisory Panel (SAP) for comment pursuant to §§ 6(b) and 25(d) of FIFRA. Although not required by FIFRA to do so, the Agency also makes those documents available to the public, and offers the public a similar opportunity to comment upon them. However, as discussed more fully in Part IV below, the referral to USDA and SAP was waived by the Administrator in the DBCP suspension proceedings in accordance with § 6(b) of FIFRA, and neither of those two bodies—nor any other person outside the Agency—was afforded an opportunity to comment on the Agency's proposed regulation of DBCP.

that the RPAR review process would be the exclusive forum for initial submission of views concerning the proposed regulation of DBCP; and neither document indicated that a failure to participate in the RPAR process would preclude a person from raising issues in the hearing which should and could have been considered first in the RPAR review. Therefore, in the exercise of my discretion and pursuant to the Administrator's general delegation of authority to me to issue notices under § 6 of FIFRA,[7] I have decided to direct that a hearing be held under § 6(b)(2) of FIFRA, to consider the matters raised by Carlos Amaya's objections and to determine whether or not to unconditionally cancel the uses which I previously proposed to conditionally cancel, or whether to conditionally cancel them subject to modifications to the terms and conditions of registration different (that is, more restrictive) than those which I proposed in the Amended Notice. Accordingly, I hereby issue this Notice of Intent to Hold a Hearing pursuant to § 6(b)(2) of FIFRA.

This Notice is organized into four parts. Part I is this introductory section. Part II is my analysis of the Order and Opinion which explains why I believe that the conclusion which it reached, concerning the relief which may be granted at the conclusion of the § 6(b)(1) hearing (under the Amended Notice), is erroneous. Part III is the Statement of Issues for the § 6(b)(2) hearing which this Notice convenes, as required by 40 CFR §§ 164.20(b) and 164.23(a), and is also concerned with procedural matters. Finally, Part IV discusses my decision to voluntarily refer this Notice to the United States Department of Agriculture (USDA) and the Agency's Scientific Advisory Panel (SAP).

II. Analysis of the Order and Opinion

As discussed above, the Order and Opinion ruled that at the conclusion of the § 6(b)(1) hearing (under the Amended Notice), an order could be entered which would unconditionally cancel uses which were only proposed in the Amended Notice to be conditionally cancelled, or which would conditionally cancel them subject to modifications to the terms and conditions of registration more restrictive than those proposed in the Amended Notice. However, I believe that this ruling is based on an improper construction of the provisions of § 6 of FIFRA.

A notice of intent to cancel issued under § 6(b)(1), such as the Amended Notice, advises all persons that the specific actions proposed therein—and only those actions—shall become final and effective by operation of law at the end of a specified 30 day period unless a hearing is requested. With respect to the conditional cancellation action, a registrant—to whom FIFRA requires the Amended Notice to be mailed—was thus afforded a simple choice: to challenge my proposal concerning those uses by requesting a hearing, or to accept the terms of the proposal (that is, to be cancelled *only if* the required changes to the terms and conditions of registration are not accomplished). Since the Amended Notice did *not* state that unconditional cancellation of conditionally cancelled uses was a possible consequence of a failure to request a hearing, or that unconditional cancellation of those uses was in any other way at stake under the Amended Notice, such an unconditional cancellation would be improper and unauthorized under the statute, and would deny due process to a registrant who was not duly notified under § 6(b) of that possibility.

Indeed, the Order and Opinion appears to acknowledge that the relief which the administrator may grant at the conclusion of the hearing is limited by the notice which has been given concerning that relief. However, the Order and Opinion indicates that *the ALJ* may determine what the scope of possible relief may be—including relief beyond the terms of the Amended Notice—and that notice of that range of relief may properly be served by *the ALJ* by *the ALJ* publishing in the Federal Register, and mailing to registrants, a "notice of the objections filed [to the Amended Notice] describing the issues raised by the objections".

For the reasons discussed below, I believe that publication and service of such a notice by the ALJ will not be sufficient, as a matter of law, to allow the Administrator to unconditionally cancel a use which was only proposed in the Amended Notice to be conditionally cancelled. Moreover, I also believe that the ALJ's construction of § 6(d) of FIFRA is erroneous in certain respects, and that the Order and Opinion fails to establish the Administrator's authority to grant any relief which was not specifically included within the terms of the Amended Notice.

A. The Order and Opinion Ignores the Statutory Distinction Between Notices *Issued Under § 6(b)(1) and § 6(b)(2) of FIFRA*

Section 6(b) of FIFRA states in pertinent part:

> If it appears to the Administrator that a pesticide or its labeling or other material required to be submitted does not comply with the provisions of this Act, or, when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment, the Administrator may issue a notice of his intent either—
>
> (1) to cancel its registration * * *, or
>
> (2) to hold a hearing to determine whether or not its registration should be cancelled * * *.
>
> Such notice shall be sent to the registrant and made public. In determining whether to issue any such notice, the Administrator shall include among those factors to be taken into account the impact of the action proposed in such notice on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy.
>
> . . . . . .
>
> The proposed action shall become final and effective at the end of 30 days from receipt by the registrant, or publication, of a notice issued under paragraph (1), whichever occurs later, unless within that time either (i) the registrant makes the necessary corrections, if possible, or (ii) a request for a hearing is made by a person adversely affected by the notice.

Further, § 2(bb) defines the term "unreasonable adverse effects on the environment" to mean "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." Thus, under the statute the Administrator must examine both the risks and the benefits associated with the use of a pesticide, and must make a reasoned judgment concerning how best to balance them.

That judgment is within the sole discretion of the Administrator (or his duly designated delegatee). The Administrator may justifiably determine that outright (unconditional) cancellation of a particular use of a pesticide is *not* warranted by the facts established during his investigation of its risks and benefits. Among other reasons, he may decide that as long as certain modifications to the terms and conditions of registration are accomplished, the pesticide and its labeling will comply with the provisions of FIFRA, and will not generally cause unreasonable adverse effects on the environment. In those circumstances, the Administrator would propose that the affected registrations be cancelled *only if* those modifications are not accomplished, and he would not put outright cancellation at stake as any part of his proposal. He would also issue a § 6(b)(1) notice indicating that unless a hearing is requested, the actions proposed therein will become final and effective by operation of law—that is, the registrations will be cancelled but only if the specified modifications to their terms and conditions are not accomplished. Under the statute, outright (unconditional) cancellation would not be a potential consequence of a failure to request a hearing—or of any requested hearing—since the Administrator would have determined

[7] Environmental Protection Agency Delegations manual, Chapter 5, Section 5-7.

not to make it a consequence in the exercise of his discretion to fashion remedies appropriate to the factual circumstances of the case.

On the other hand, there may be situations where the Administrator's investigation of the risks and benefits of a pesticide permits him to conclude only that outright cancellation *probably* is not warranted, and that modifications to the terms and conditions of registration *probably* will achieve the statutory balance between risks and benefits. He may also recognize that his judgment concerning the balancing of risks and benefits is only tentative, and may determine to make a final decision only after permitting all interested persons to present their views on the record in a formal hearing. In those circumstances, the Administrator would issue a notice under § 6(b)(2) declaring his intention to hold a hearing "to determine whether or not its registration should be cancelled." Such a notice would obviously indicate that outright cancellation *is* a potential outcome of the hearing to be held.

The two types of notices which the Administrator may issue under § 6(b) thus clearly provide him with wide discretion to prescribe the nature of any hearing which may be held under the notice concerning his proposed balancing of risks and benefits. He may determine that specific regulatory actions short of outright cancellation are sufficient to achieve the statutory balance and that he will not put outright cancellation at stake in any hearing which may be requested; or he may determine that he is uncertain whether outright cancellation is necessary under the statute, and to hold a hearing in which outright cancellation will be at stake.

The Order and Opinion, however, would usurp the Administrator's discretion in these respects and would vest it in the ALJ. According to the Order and Opinion, whenever a request for a hearing under a § 6(b)(1) conditional cancellation notice is timely made—by a person who alleges to be adversely affected on the grounds that conditional cancellation is inadequate and that outright cancellation is necessary—the ALJ may merely issue a notice of the timely objections, and outright cancellation will automatically be at stake in the § 6(b)(1) hearing as a matter of law. I believe that any such reading of the law—which would eliminate the fundamental distinction between notices issues under § 6(b)(1) and § 6(b)(2), and which would strip the Administrator of his discretion to determine the nature of the hearing—is clearly erroneous.

Indeed, if the interpretation of the Order and Opinion is correct, registrants who *concur* with the regulatory actions proposed in a § 6(b)(1) conditional cancellation notice would nevertheless request a hearing to protect their rights, since outright cancellation could be put at stake as the result of another party's request for a hearing. The Order and Opinion downplays this consequence of its interpretation by indicating that such registrants would be able to rely on their rights to intervene in any hearing which may be requested. However, as the Opinion and Order also notes, the statutes *itself* does not explicitly provide for such intervention, so that, notwithstanding the provisions of the Agency's Rules of Practice which provide for *motions* for *leave* to intervene, a well-counseled registrant would probably request a hearing and become a party as a matter of *right*.[8]

Finally, it must be emphasized that even if the Administrator issues a § 6(b)(1) conditional cancellation notice, he retains his discretion to broaden the scope of the hearing if, for example, he determines that the objections of a party who claims that conditional cancellation is inadequate are meritorious, or raise issues which he has not previously considered. In those circumstances, the Administrator (or his duly designated delegatee) could put outright cancellation at stake either by amending his § 6(b)(1) notice, or by issuing a separate notice under § 6(b)(2). However, any such decision to expand the range of possible outcomes of the hearing remains within the sole discretion of the Administrator (or his delegatee) and is not transferred to the ALJ merely because a request for a hearing has been made under the conditional cancellation notice.[9]

B. The ALJ's Authority to Issue Certain Notices As a Hearing Examiner Does Not Authorize Him to Alter the Nature of the Proceeding in Which He Presides. Administrative Law Judges are appointed under 5 U.S.C. § 3105 to serve as hearing examiners for Proceedings required to be conducted in accordance with 5 U.S.C. §§ 556 and 557 (see also 40 CFR § 164.2(b)). As a hearing examiner, the ALJ is authorized to generally regulate the course of the hearing, to receive relevant evidence, and to recommend a decision to the Administrator concerning the objections to his proposed actions. Under the Agency's Rules of Practice, however, the ALJ's authority does not begin until the proceeding is referred to him; and the proceeding is not referred to him until *after* it has been commenced by the Administrator's issuance of a notice of intent to hold a hearing under § 6(b)(2) or by the filing of a request for a hearing by a person adversely affected by a notice of intent to cancel under § 6(b)(1) (40 CFR § 164.20). As a hearing examiner, the ALJ does not in any way convene the hearing or determine the nature of the hearing to be held, but merely presides in the hearing which has been commenced pursuant to the notice which the Administrator has issued. The ALJ is limited by that notice, and has no authority whatsoever to unilaterally change its scope or nature or to determine that he will grant relief at the conclusion of the hearing which the Administrator determined would not be at stake in the hearing.

It is true that in his conduct of the proceedings, the ALJ is authorized to issue certain notices consistent with his authority. In particular, 40 CFR § 164.8 directs the ALJ to publish in the FEDERAL REGISTER "a notice of the filing of any objections, pursuant to § 164.20(b) or responses pursuant to § 164.24, and a notice of the public hearing as provided by § 164.80 et seq. Said notice of public hearing shall designate the place where the hearing will be held and specify the time when the hearing will commence." The Order and Opinion interprets this provision as also allowing the ALJ to describe, in that notice, the issues raised by the objections filed to the Amended Notice (p.10), and indicates that the purpose of describing the issues raised by the objections is to allow "all parties interested in the outcome [of the hearing] the opportunity to intervene" (p.9).

But even assuming that the notice which the ALJ is directed to publish under § 164.8 may properly include a description of the issues raised by the objections, it begs the question to assert that mere publication of that notice is sufficient to notify all interested persons that the range of outcomes at stake in the hearing has been expanded. To the contrary, such a notice would merely tell other inter-

[8] Although § 164.31 of the Rules of Practice indicates that leave to intervene will be freely granted, it also indicates that it will only be granted to the extent that it will "not unreasonably broaden the issues already presented". Rather than risk being limited to an adversary's presentation of the issues, a registrant would undoubtedly initiate such hearings itself.

[9] Even if the Administrator chooses not to expand the scope of the hearing, the parties requesting the expansion would not be denied their opportunity to be heard under § 6(b). Rather, the parties would still have the opportunity—as would Carlos Amaya here—to prevent evidence in order to persuade the Administrator that his initial proposal was inadequate. If the parties should succeed, the Administrator would, at the conclusion of the hearing, revoke his conditional cancellation notice, and would issue a new § 6(b)(1) notice proposing the unconditional cancellation of the affected uses. Importantly, the Agency would then be the active advocate of the outright cancellation actions proposed in the new § 6(b)(1) notice.

ested parties that Carlos Amaya will be seeking in the hearing to persuade the Administrator that his proposed actions are inadequate and that he should unconditionally cancel all uses of DBCP; interested persons could intervene for the purpose of convincing the Administrator that he should *not* be persuaded by Carlos Amaya and that he should *not* change his announced intention. However, unless the *Administrator* (or his duly designated delegatee) exercises his discretion and determines that the broader relief requested by Carlos Amaya will be at stake in the already-commenced proceedings, the ALJ is powerless to make that determination himself and nothing that he may publish can affect the range of relief which is at stake in the hearing.

Indeed, ALJ Harwood has previously acknowledged the limited nature and effect of his proposed notice:

> JUDGE HARWOOD: A notice of the hearing, yes. However, I can distinguish between the 30-day notice, which is sent to the registra[nt] because that in effect tells him that if he doesn't act within 30 days this is going to happen to him.
>
> *Whereas, the notice that I put in [the Federal Register] is not a notice of what is going to happen to him, but the notice I put in would simply be the issues which are raised at the hearing.*
>
> * * * * *
>
> In other words, I am not giving him any notice [that] if you don't come in and intervene there is going to be an order issued against you with such and such consequences. The only thing I am saying is this is an issue. . . ." (Transcript of Pre-Hearing Conference, December 13, 1978, p.85, emphasis added)

I therefore believe that the Order and Opinion is erroneous insofar as it concludes that publication of the notice which the ALJ proposes to publish would in any way put at stake in those hearings any outcome which the Administrator has not himself proposed in the Amended Notice or in subsequent notices.[10]

C. The Order and Opinion Relies on an Erroneous Construction of § 6(d) of *FIFRA in Support of Its Conclusion.* As discussed above, the Amended Notice did not advise registrants or other interested persons that outright cancellation was a potential consequence of a failure to request a hearing in response to it or that it was a potential outcome of any hearing which might be requested. Nor could any notice which the ALJ might publish properly change or expand the nature of the hearing or the range of potential outcomes.

However, the Order and Opinion suggests that § 6(d) of FIFRA authorizes the Administrator to grant broad remedial relief appropriate to the facts found at the hearing, irrespective of what he has proposed in his § 6(b)(1) notice. In support of this contention, the Order and Opinion cites the following portion of § 6(d):

> [* * * the Administrator shall evaluate the data and reports before him and issue an order either revoking his notice of intention issued pursuant to this section, or] shall issue an order either cancelling the registration, changing the classification, denying the registration, or requiring modification of the labeling or packaging of the article."[11]

The Order and Opinion thus concludes that "[n]othing in this language indicates that the Administrator is limited to what has been proposed in his notice of intent to cancel. Instead, it would appear that the Administrator has broad authority to take any remedial action appropriate to the facts which have been found." (p.10). However, analysis of this provision of § 6(d) in conjunction with other pertinent provisions of FIFRA clearly demonstrates that four types of orders are listed in order to track the various provisions of FIFRA which grant persons the opportunity to request adjudicatory hearings.

In that regard, § 3(c)(6) of FIFRA concerns denials of applications for registration and states that the administrator shall notify the applicant of any decision to deny an application for registration. That section also provides that "[u]pon such notification, the applicant for registration or other interested person with the concurrence of the applicant shall have the same remedies as provided for in section 6." Accordingly, § 6(d) has a provision that at the conclusion of the hearing, the Administrator may issue an order "denying the registration".

Section 3(d)(2) of FIFRA provides that if the Administrator determines that a change in the classification of any use of a pesticide from general use to restricted use is necessary to prevent unreasonable adverse effects on the environment, he shall notify the registrant of the pesticide of that determination. Section 3(d)(2) also provides that "[t]he registrant, or other interested person with the concurrence of the registrant, may seek relief from such determination under section 6(b)." Accordingly, § 6(d) has a provision that at the conclusion of the hearing, the Administrator may issue an order "changing the classification."

Section 6(b)(1) provides that if it appears to the Administrator that a pesticide does not comply with the provisions of FIFRA or, when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment, he may issue a notice of his intent to cancel its registration, which must be sent to the registrant and made public. Persons adversely affected by the notice are afforded an opportunity to request a hearing. Accordingly, § 6(d) has a provision that at the conclusion of the hearing the Administrator may issue an order "cancelling the registration."

Finally, § 6(b)(1) also provides that if it appears to the Administrator that a pesticide's labeling or other material required to be submitted does not comply with the provisions of FIFRA, he may issue a notice of his intent to cancel its registration, which must be sent to the registrant and made public. Persons adversely affected by the notice are afforded an opportunity to request a hearing. Accordingly, § 6(d) has a provision that at the conclusion of the hearing, the Administrator may issue an order "requiring modification of the labeling or packaging of the article."

It is therefore abundantly clear that the recitation in § 6(d) of four types of orders which the Administrator may issue at the conclusion of a hearing does *not* support the assertion that the Administrator has broad authority to take *any* remedial action at the conclusion of a § 6(b)(1) hearing; nor does it in any way support the assertion that the Administrator is not limited to what he has proposed in his § 6(b)(1) notice. Thus, to the extent that the Order and Opinion concludes that the mere language of § 6(d) is sufficient as a matter of law to comply with due process requirements of specific notice of proposed and potential actions, it is clearly in error.

III. Statement of Issues and Procedural Matters

As I mentioned above, Carlos Amaya has raised several issues in his objections to the conditional cancellations proposed in the Amended Notice which were not previously presented to the Agency during the RPAR

[10] The conclusion of the Order and Opinion that mere publication of the issues raised by the objections is sufficient to expand the scope of relief which may be granted at the conclusion of the hearing, ignores the intent of Congress when it provided for referral to the United States Department of Agriculture and the Agency's Scientific Advisory Panel of actions proposed in notices of intent to cancel. *See* §§ 6(b) and 25(d) of FIFRA. Although in this particular proceeding, such external review requirements were waived in the DBCP suspension proceedings in accordance with § 6(b), the interpretation of the Order and Opinion would seriously undermine those review provisions in cases where conditional cancellation actions are referred to and commented upon by USDA and SAP, but where unconditional cancellations—which are not referred or proposed to those bodies as possible outcomes under consideration by the Agency—are taken at the conclusion of the proceedings.

[11] The bracketed portion was not quoted in the Order and Opinion.

review, and which I have determined are not frivolous.

Most importantly, Amaya's objections refer to new residue data developed by the California Department of Food and Agriculture (CDFA), using a new and more sensitive analytical methodology, which indicate that residues of DBCP have been found in several crops (oranges, lemons, peaches, and grapes) for which the Final Position Document had predicted that no residues would be present.

The Agency formally received that data from CDFA on November 7, 1978, and it was then independently reviewed and evaluated by Agency chemists. The Agency chemists determined that subject to certain limitations and qualifications, the data were valid; they further determined that their previous estimates of zero residues of DBCP for certain uses had to be revised in light of the new data, and that a residue level of 10 parts per billion (ppb) is now the appropriate value for purposes of estimating risk.[11]

Obviously, these revised residue estimates increase the risks associated with these uses over the levels previously estimated in the Final Position Document (which assumed that there was no ingestion exposure to DBCP from those uses); these additional risks, together with the previously estimated risks, must now be weighed against the benefits of those uses. If the risks exceed the benefits, various methods of reducing those risks must then be considered; and it must be determined whether, by imposing certain conditions upon continued use, those risks can be adequately reduced to the point where they are exceeded by the benefits.

With respect to the latter question—that of risk reduction—Carlos Amaya has also asserted in his objections that the risk reduction methods which I proposed in the Amended Notice (for risks from exposure to DBCP *other than* from ingestion exposure) are inadequate and fail to provide proper protection against the identified risks. In summary, the objections assert that the proposed re-entry intervals (i.e., the periods following application during which re-entry to a treated area, without specified protective clothing and/or equipment, is prohibited) are too short; that a cartridge respirator does not provide adequate protection and that a supplied-air respirator should be required; that it is impossible to comply with the proposed protective clothing requirements; and that the label language should contain more explicit instructions concerning farmworker protection and the establishment of monitoring and educational programs.

Reserving judgment on the merits of these allegations, I do not believe that they are frivolous, and they are supported by a clear and concise statement of their underlying rationale. As I indicated earlier, it would have been preferable to have received and considered these views and objections during the RPAR review, prior to the promulgation of my final proposal in the Amended Notice. However, because the external review requirements were waived in this case by the Administrator, there was no opportunity for interested persons to challenge or comment upon the adequacy of my risk reduction proposals *before* they were embodied in the final Amended Notice. Rather, the first opportunity which interested persons—including registrants and Amaya alike—were afforded to challenge or comment upon those proposals was *after* its issuance; the challenge could only be made by requesting a § 6(b)(1) hearing in response to the Amended Notice and by setting forth comments in the form of objections.

As discussed in Part II, *supra*, these unusual circumstances have resulted in a procedural anomaly. If interested persons (such as registrants) establish in the § 6(b)(1) hearing, based on evidence of record, that the risk reduction proposals—including proposed unconditional cancellations—are excessive and that less restrictive measures will suffice to adequately reduce risks, they may be granted the relief they seek. That is, the Administrator may issue a final order of conditional cancellation instead of an order of unconditional cancellation, or an order of conditional cancellation which requires less restrictive modifications to the terms and conditions of registration than those proposed. On the other hand, if interested persons (such as Amaya) establish in the § 6(b)(1) hearing, based on evidence of record, that the risk reduction proposals are inadequate and do not sufficiently reduce risks, they may *not* be granted the relief they seek at the conclusion of the § 6(b)(1) hearing. That is, the Administrator may *not* issue a final order of unconditional cancellation instead of an order of conditional cancellation, or a final order of conditional cancellation which requires more restrictive modifications to the terms and conditions of registration than those proposed. Rather, the Administrator would have to issue a new § 6(b)(1) notice proposing the more restrictive actions, and offer interested persons the opportunity to request a second § 6(b)(1) hearing to challenge that new proposal.

However, since *no* interested person had the opportunity to comment on the proposals in the Amended Notice prior to its issuance, I believe that *all* interested persons should have equal opportunities—in the same hearing—to be afforded the relief which they seek. Accordingly, for all of the reasons discussed above, I have determined to issue this § 6(b)(2) Notice.

In accordance with § 164.23 of the Agency's Rules of Practice (40 CFR Part 164), this part of the Notice states the questions as to which evidence shall be taken at the § 6(b)(2) hearing.

At the outset, it is important to clarify that the only uses of DBCP to be considered at this § 6(b)(2) hearing are those uses which were proposed to be conditionally cancelled in the Amended Notice; that is, evidence will be taken as to *all* uses of DBCP *other than* the 22 uses which are now cancelled [12] and *other than* tomatoes.

With respect to those conditionally cancelled uses, the following are the questions as to which evidence shall be taken:

(1) Whether, if the modifications to the terms and conditions of registration specified in the Amended Notice are accomplished, these uses of DBCP will genrally cause unreasonable adverse effects on the environment when used in accordance with widespread and commonly recognized practice;

(2) Whether these uses of DBCP will generally cause unreasonable adverse effects on the environment when used in accordance with widespread and commonly recognized practice unless modifications to the terms and conditions of registration more restrictive than those specified in the Amended Notice are accomplished;

(3) Whether, if the modifications to the terms and conditions of registration specified in the Amended Notice are accomplished, the labeling of DBCP products for these uses will comply with the provisions of FIFRA;

(4) Whether the labeling of DBCP products of these uses will not comply with the provisions of FIFRA unless modifications to the terms and conditions of registration more restrictive than those specified in the Amended Notice are accomplished; and

(5) Whether there are no modifications to the terms and conditions of registration which can be accomplished so that these uses of DBCP will not generally cause unreasonable adverse effects on the environment when used in accordance with widespread and commonly recognized practice, and so that the labeling of DBCP products for those uses will comply with FIFRA, and whether the registrations of DBCP products for these uses should therefore be unconditionally cancelled.

It should be clearly understood that at the conclusion of this § 6(b)(2) hearing, all uses of DBCP covered by this § 6(b)(2) Notice—i.e., those uses which were proposed to be conditionally cancelled by the Amended Notice—may be

[11] A copy of the chemists' evaluation and determination (Worthington, 1979) may be obtained from Mr. C. J. Kempter, Special Pesticide Review Division (TS-791), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-8053.

[12] See footnote 3, *supra*.

unconditionally cancelled, an a final order of *unconditional cancellation* may be issued for some or all of such uses.

Any person wishing to participate in the hearing must file a written response to this statement of issues which must be *received* within 45 days of *the date of this Notice.* Any written response to this statement of issues must comply with § 164.24 of the Rules of Practice, and must specifically identify the conditionally cancelled uses of DBCP with respect to which the person intends to participate in the hearing, and must include the position and interest of the person with respect to each such identified use.

Requests should be submitted to: Hearing Clerk (A-110) U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Finally, unless the Chief Administrative Law Judge does so sua sponte, I intend to move under § 164.32 of the Rules of Practice that the proceeding initiated by this Notice be consolidate with the ongoing § 6(b)(1) proceedings (FIFRA Docket Nos. 401 et al.), so that a single comprehensive decision and order concerning cancellation or continued registration of all uses of DBCP can be issued. If the proceedings were to be consolidated, it would probably not be necessary for parties to the § 6(b)(1) hearing to file separate written responses to this § (b)(2) Notice.[13] However, since I cannot predict whether or not the Chief Administrative Law Judge will grant such a motion, the parties to the § 6(b)(1) hearing who wish to participate in the § 6(b)(2) hearing and to submit evidence concerning the issues raised therein, should comply with § 164.24 and should submit a written response within the specified 45 day period.

IV. Referral to USDA and SAP

As mentioned above, the Agency is required by §§ 6(b) and 25(d) of FIFRA to submit notices of intent issued under § 6(b) of FIFRA to the Secretary of the Department of Agriculture, and to the Agency's Scientific Advisory Panel, respectively, for prior review and comment. However, § 6(b) also provides that upon a finding by the Administrator that suspension of a pesticide registration is necessary under § 6(c) of FIFRA to prevent an imminent hazard to human health, he may waive these external review requirements. In his Notice of Intent to Suspend and Conditionally Suspend Registrations of Pesticide Products Containing Dibromochloropropane, the Administrator made such a finding (42 FR 48915, September 26, 1977). Accordingly, in his original Notice of Intent to Cancel the Registrations or Change the Classifications of Pesticide Products Containing Dibromochloropropane (DBCP), and Statement of Reasons (42 FR 57545, November 3, 1977) (the "Original Notice"), the Administrator specifically invoked that authority and waived the external review requirements for the actions initiated by the Original Notice (*id.* at 57546, footnote 2).

The Original Notice initiated actions which could have resulted in the outright (unconditional) cancellation of all uses of DBCP. Upon the completion of the RPAR review of DBCP, I amended the Original Notice in accordance with the provisions of § 164.21(b) of the Rules of Practice, as I was directed to do by the Administator in the Orignal Notice (Parts IV-A and IV-B; *id.* at 57547-57548). As discussed above, the Amended Notice limited the number of uses of DBCP which were proposed to be unconditionally cancelled, and proposed to only conditionally cancel the remaining uses. As the result of the present Notice, however, the "conditionally cancelled" uses are again at risk of being unconditionally cancelled. The resultant potential consequences of the two notices combined (i.e., the Amended Notice and the present Notice) are therefore the same as the potential consequences of the Original Notice, as to which the review requirements were already waived. Accordingly, issuance of the present Notice does not create any new obligations for referral to USDA and SAP.

Nevertheless, I have determined to voluntarily submit at this time both the Amended Notice and this Notice (together with the Final Position Document) to USDA and SAP for their comments concerning the actions proposed therein. I am doing this wholly in the exercise of my discretions because I believe that the issues raised in these hearings are important ones as to which these two bodies have expertise which may be of considerable value to the Administrator in reaching a final decision concerning the fate of all uses of DBCP.

Since this referral is voluntary, the time-frames detailed in § 6(b) for comments from these bodies are not applicable, and the Agency is not obligated to publish any formal response thereto.[14] In other words, this Notice is a *final* Notice, and it is effective *immediately.* Finally, it is my intention to make any such comments as may be received from USDA of SAP at any time[15] available to the parties in the hearings so that they may utilize them in any fashion which they deem appropriate.

Dated: February 26, 1979.

Steven D. Jellinek,
Assistant Administrator for Toxic Substances.

[FR Doc. 79-6102 Filed 3-1-79; 8:45 am]

---

[13] Section 164.32 of the Rules of Practice states that "consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred." Although this provision was probably intended to insure that parties' rights to raise issues could not be *curtailed* by consolidation, it could also be read as limiting a party's right to *expand* the issues which had already been raised in a hearing and as to which it could submit evidence. However, as discussed above, the *issues* raised by the § 6(b)(2) notice were already raised by the objections of some parties in the § 6(b)(1) hearing; and although the *relief* requested by those objections could not be granted in the § 6(b)(1) hearing, the *issues* are already in controversy in the § 6(b)(1) hearing so that consolidation would not expand those issues under the latter interpretation of § 164.32.

[14] Ordinarily, I would submit to USDA and SAP a *proposed* notice at least 60 days prior to sending it to registrants and making it public; those bodies would then have 30 days from receipt within which to comment in writing on the proposed notice, and I would be obligated to publish their comments (and my responses thereto) in the Federal Register together with the final notice. However, as I explained above, I am not required to submit a proposed notice in the circumstances of this case, nor to respond to comments before making the notice final, and I have determined not to do so.

[15] The normal 30-day deadline for written comments is not applicable in the circumstances of this case.

[6560-01-M]

[FRL 1068-2]

SCIENCE ADVISORY BOARD ECOLOGY COMMITTEE

Open Meeting

Under Public Law 92-463, notice is hereby given that a meeting of the Ecology Committee of the Science Advisory Board will be held on March 19 and 20, 1979, beginning at 9:00 a.m., March 19 in the Administrator's Conference Room, Room 1101, West Tower, Waterside Mall; and at 9:00 a.m., March 20, Room 2126 in Waterside Mall, 401 M Street, SW, Washington, DC.

This is the nineteenth meeting of the Ecology Committee. The agenda includes a report on Science Board activities; briefings on alternatives being considered for management of Ecological Research Programs in EPA; discussion of Office of Research and Development suggestions on future activities of the Ecology Committee; briefing on air programs of the Office of Air, Noise, and Radiation, and member items of interest.

The meeting is open to the public. All members of the public wishing to attend, participate, or obtain information should contact Dr. J Frances Allen, Executive Secretary, Ecology Committee, 703-557-7720, by close of business March 15, 1979.

Dated: February 27, 1979.

RICHARD M. DOWD,
Staff Director,
Science Advisory Board.

[FR Doc. 79-6381 Filed 3-1-79; 8:45 am]

[6560-01-M]

[FRL 1068-3]

SCIENCE ADVISORY BOARD, ENVIRONMENTAL HEALTH ADVISORY COMMITTEE, STUDY GROUP ON PESTICIDE TOLERANCES

Open Meeting

Under Public Law 92-463, notice is hereby given that a meeting of the Study Group on Pesticide Tolerances of the Science Advisory Board's Environmental Health Advisory Committee will be held at 9:00 a.m. on March 21, 1979 in Conference Room A (Room 1112), Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

The principal purpose of the meeting will be (1) to work on the Study Group's report to the Environmental Health Advisory Committee; and (2) to develop an appropriate response to the Agency's request for consideration and comment on a report titled, "Cancer-Causing Chemicals in Food." The Agenda will also include follow-up presentations and discussions of items relevant to completion of the Study Group's report such as, in particular, (a) tolerance setting as it relates to oncogenic and mutagenic substances, and (b) tolerance setting as it relates to conditional registration of pesticides.

Pertinent background information follows. In response to an Agency request to the Science Advisory Board, the Board's Environmental Health Advisory Committee established a Study Group on Pesticide Tolerances and charged it with assisting the Committee in an evaluation of the scientific basis of the Agency's system for establishing tolerances for pesticide residues in agricultural crops. This is the sixth meeting of the Study Group. At a meeting on April 5, 1978, the Study Group was briefed on and discussed various aspects of the legislative authority and mandate directly or indirectly relating to the Agency's tolerance setting system. At a meeting on May 11 and 12, 1978, the Study Group was briefed on and discussed scientific issues relating to estimates of exposure. At a meeting on June 27-28, 1978, the Study Group was briefed on and discussed scientific issues relating to toxicology data and hazard evaluation. At a meeting on October 23 and 24, 1978, the Study Group heard statements from members of the public, identified and discussed issues to be addressed in the Study Group's report to the Environmental Health Advisory Committee, and began to develop positions with regard to these issues. At a meeting on December 4 and 5, 1978, the Study Group continued to identify and discuss issues to be addressed in the Study Group's report and to develop positions with regard to these issues.

At a subsequent meeting on February 26, 1979, the Study Group worked on a first draft of its report to the Environmental Health Advisory Committee, was briefed on conditional registration, and began to discuss the report titled, "Cancer-Causing Chemicals in Food," referred to above. Further meetings of the Study Group will be scheduled as needed.

The meeting will be open to the public. Any member of the public wishing to attend or present or submit a paper should contact the Secretariat, Science Advisory Board (A-101C), U.S. Environmental Protection Agency, Washington, D.C. 20460 by COB March 15, 1979. Please ask for Mrs. Ilene Stein. The telephone number is (703) 557-7720.

Dated: February 27, 1979.

RICHARD M. DOWD,
Staff Director,
Science Advisory Board.

[FR Doc. 79-6380 Filed 3-1-79; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

BANK HOLDING COMPANIES

Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than March 25, 1979.

A. *Federal Reserve Bank of Boston,* 30 Pearl Street, Boston, Massachusetts 02106:

First National Boston Corporation, Boston, Massachusetts (financing service activities; Arizona, California, Colorado, Oregon, Washington): To engage, through its subsidiary, Invenchek, Inc., in marketing floor plan financing related services; and servicing loans and other extensions of credit for corporations, trusts, partnerships, and individuals engaged in the business of floor plan financing by processing transactions relating to floor plan financing, verifying inventory, securing floor plan obligations, and preparing reports related to floor plan transactions. These activities would be conducted from an office in Los Angeles, California, and the geographic area to be served is within Arizona, California, Colorado, Oregon, and Washington.

B. *Federal Reserve Bank of Philadelphia,* 100 North 6th Street, Philadelphia, Pennsylvania 19105:

Philadelphia National Corporation, Philadelphia, Pennsylvania (consumer finance activities: Delaware, New Jersey, Pennsylvania): To engage, through its subsidiary, Colonial Mortgage Consumer Discount Company, in making personal installment loans secured by mortgages on the borrowers' real estate and generally engaging in the business of a consumer finance company. These activities would be conducted from an office in Melrose Park, Pennsylvania, and the geographic area to be served is Delaware, New Jersey, and Pennsylvania. Comments on this application must be received by March 20, 1979.

C. *Federal Reserve Bank of Chicago,* 230 South LaSalle Street, Chicago, Illinois 60690:

1. Walter E. Heller International Corporation, Chicago, Illinois (commercial finance and factoring activi-

ties; New Mexico, Texas): To engage, through its subsidiary, Texas Western Financial Corporation, in commercial finance and factoring activities. These activities would be conducted from an office in El Paso, Texas, and the geographic area to be served is New Mexico and the western portion of Texas.

2. Walter E. Heller International Corporation, Chicago, Illinois (mortgage activities; Idaho, Oregon, Washington): To engage, through its subsidiary, Walter E. Heller & Co., Natofin Division, in making real estate mortgages primarily for industrial and commercial construction. Some multifamily residential and condominium construction would also be financed and some nonconstruction loans may be made. These activities would be conducted from an office in Bellevue, Washington, and the geographic area to be served is Idaho, Oregon, and Washington.

D. *Federal Reserve Bank of St. Louis*, 411 Locust Street, St. Louis, Missouri 63166:

First Arkansas Bankstock Corporation, Little Rock, Arkansas (mortgage and insurance activities; Arkansas): To engage, through its subsidiary, FABCO Mortgage Company, Inc., in making, acquiring, and servicing real estate mortgage loans; and acting as agent or broker with respect to insurance directly related to its extensions of mortgage credit, which would include mortgage redemption insurance, credit life, or other life or accident and health insurance. These activities would be conducted from an office in Little Rock, Arkansas, and the principal geographic area to be served is the greater Little Rock SMSA, which includes Little Rock, North Little Rock, suburban areas, and Pulaski County, Arkansas. Some loans may be originated and serviced as a result of requests from correspondent banks located elsewhere in Arkansas.

E. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, February 26, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 79-6371 Filed 3-1-79; 8:45 am]

[6210-01-M]

MISSOURI COUNTRY BANCSHARES, INC.

Acquisition of Bank

Missouri Country Bancshares, Inc., Liberal, Missouri, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 56.77 per cent or more of the voting shares of Bank of Raymondville, Raymondville, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than March 26, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, February 26, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 79-6369 Filed 3-1-79; 8:45 am]

[6210-01-M]

SWG FINANCIAL ENTERPRISES, INC.

Formation of Bank Holding Company

SWG Financial Enterprises, Inc., Morristown, Tennessee, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of Hamilton Bank of Morristown, Morristown, Tennessee. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than March 26, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, February 26, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 79-6368 Filed 3-1-79; 8:45 am]

[6210-01-M]

T.N.B. FINANCIAL CORP.

Acquisition of Bank

T.N.B. Financial Corp., Springfield, Massachusetts, has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with Pioneer Bancorp, Inc., Greenfield, Massachusetts. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

In addition to the factors considered under section 3 of the Act (banking factors), the Board will consider the proposal in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C. 1843).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than March 26, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, February 26, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 79-6357 Filed 3-1-79; 8:45 am]

[6210-01-M]

WELLS FARGO & CO.

Proposed Acquisition of Wells Fargo Insurance Services

Wells Fargo & Company, San Francisco, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Wells Fargo Insurance Services, San Francisco, California.

Applicant states that the proposed subsidiary would engage in the activity of acting as an insurance agent or broker for the sale of property damage or casualty insurance, together with associated liability insurance, all of which is related to extensions of credit made by the banking or non-banking subsidiaries of Wells Fargo & Company, to the extent permissible under ap-

plicable state insurance laws or regulations. These activities would be performed from offices of applicant's subsidiary in San Francisco, California and Scottsdale, Arizona, and the geographic areas to be served are the states of California, Arizona, Nevada, Colorado, Texas, Oregon and Washington. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with precedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than March 26, 1979.

Board of Governors of the Federal Reserve System, February 26, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 79-6370 Filed 3-1-79; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

ASSOCIATED NEWSPAPER GROUP LIMITED

Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: Associated Newspapers Group Limited is granted early termination of the 30-day waiting period provided by law and the premerger notification rules with respect to its proposed acquisition of the assets and of stock of Esquire Magazine, Inc. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: February 14, 1979.

FOR FURTHER INFORMATION CONTACT:

Malcolm R. Pfunder, Assistant Director for Evaluation, Bureau of Competition, Room 394, Federal Trade Commission, Washington, D.C. 20580 (202-523-3404).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the FEDERAL REGISTER.

By direction of the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-6565 Filed 3-1-79; 8:45 am]

[6750-01-M]

CHICAGO BRIDGE & IRON CO.

Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: Chicago Bridge & Iron Company is granted early termination of the 30-day waiting period provided by law and the premerger notification rules with respect to its proposed acquisition of the voting securities of Circle Bar Drilling Company. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to requests for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: February 15, 1979.

FOR FURTHER INFORMATION CONTACT:

Malcolm R. Pfunder, Assistant Director for Evaluation, Bureau of Competition, Room 394, Federal Trade Commission, Washington, D.C. 20580 (202-523-3404).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the FEDERAL REGISTER.

By direction of the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-6564 Filed 3-1-79; 8:45 am]

[4110-86-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control

SECRETARY'S CONFERENCE ON INFLUENZA

Open Meeting, Correction

Notice of the March 6, 1979, Secretary's Conference on Influenza was published at 44 FR 1 11294 on Wednesday, February 28, 1979.

Item (c) of the meeting purpose is corrected to read as follows: "discuss the role of the Federal government in influenza immunization programs in 1979-1980."

All other aspects of the notice published on February 28, 1979, remain the same.

Dated: March 1, 1979.

JOHANNES STUART,
Acting Director,
Center for Disease Control.

[FR Doc. 79-6624 Filed 3-1-79; 11:31 am]

[4110-03-M]

Food and Drug Administration

[Docket No. 78P-0167]

ABBOTT LABORATORIES, INC.

Panel Recommendation on Petition for Reclassification

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency is publishing for public comment the recommendation of the Immunology Device Classification Panel that the Alpha-fetoprotein RIA Diagnostic Kit be reclassified from class III (premarket approval) into class II (performance standards). This recommendation was made after review of the reclassification petition filed by Abbott Laboratories, North Chicago, IL 60064. The Food and Drug Administration (FDA) has reviewed the Panel recommendation and concludes that reclassification into class II is inappropriate. Therefore, FDA intends to deny the petition for reclassification unless new information is submitted during the comment period to justify the reclassification. After reviewing the public comments received, the agency will approve or deny the reclassification by order in the form of a letter to the petitioner. the agency's decision on this reclassification petition will be announced in the FEDERAL REGISTER.

DATE: Comments by May 1, 1979.

ADDRESS: Written comments (preferably four copies) to the Hearing Clerk (HFA-305), Food and Drug Administration Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

S. K. Vadlamudi, Bureau of Medical Devices (HFK-440), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7234.

SUPPLEMENTARY INFORMATION: On March 15, 1978, Abbott Laboratories, North Chicago, IL 60064, submitted to the Food and Drug Administration (FDA) a reclassification petition under section 513(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(f)). The manufacturer requested reclassification of the Alpha-fetoprotein Radioimmunoassay (RIA) Diagnostic Kit, based upon the manufacturer's conclusion that the device is not substantially equivalent to any device that was in commercial distribution before May 28, 1976 and that the device is not substantially equivalent to a device placed in commercial distribution since that date and subsequently reclassified. FDA has determined that the manufacturer's conclusions with respect to the status of this device are correct. Upon this determination, the device is automatically classified into class III under section 513(f)(1) of the act.

Under section 515(a)(2) of the act (21 U.S.C. 360e(a)(2)), before a device that is in class III under section 513(f)(1) of the act can be marketed, it must either be reclassified under section 513(f)(2) of the act or have an approval of an application for premarket approval under section 515 of the act, unless there is in effect for the device an investigational device exemption under section 520(g) of the act (21 U.S.C. 360j(g)).

On June 29, 1978, the Immunology Device Classification Panel reviewed the petition and recommended that the device be reclassified into class II.

To determine the proper classification of the device, the panel considered the criteria in section 513(a)(1) of the act.

For the purpose of classification, the Panel assigned to this generic type of device the name "Alpha-fetoprotein RIA Diagnostic Kit for Neural Tube Defects (NTD)," and described this type of device as a method for quantitative measurement of Alpha-fetoprotein (AFP) in human serum plasma and amniotic fluid. Elevated levels of AFP are used for the early diagnosis of NTD.

SUMMARY OF THE REASONS FOR THE RECOMMENDATION

The Panel made the following determinations in supprt of its recommendation:

1. The device is not an implant nor is it life-sustaining or life-supporting.

2. If the device provides erroneous information, there is substantial potential risk that a decision to terminate pregnancy may result in the abortion of a normal fetus, or in a decision to continue a pregnancy that may result in the birth of a severely deformed child.

3. General controls alone are not sufficient to provide reasonable assurance of the safety and effectiveness of the device. Sufficient scientific and medical data exist, however, to establish a performance standard to provide such assurance.

4. The device has performance characteristics which should be controlled and maintained at a level that permits the differentiation of normal maternal levels of AFP from those that indicate fetal abnormalities.

SUMMARY OF THE DATA ON WHICH THE RECOMMENDATION IS BASED

The petitioner maintains that the test should be reclassified into class II because it is not for use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health; nor does it present a potential unreasonable risk of illness or injury. The petitioner presented data which the petitioner believes demonstrate that sufficient information is available to establish performance standards for products used in the quantitation of AFP in maternal serum and amniotic fluid for the diagnosis of NTD.

The agency believes, however, that the test should be retained in class III, because the results obtained from the test may be the sole basis for life-saving or life-terminating decisions. The potential for misinterpretation of results is substantial, because of the lack of a clear distinction between the normal and abnormal levels of AFP, the fact that fetal red blood cells can contribute to erroneous AFP values in tests of amniotic fluid, and the fact that AFP levels vary with gestational age, which may not be correctly determined.

Direct potential risks may arise also from use of ultrasonography (to determine gestational age) and amniocentesis (to obtain a sample of amniotic fluid for confirmatory AFP tests). In the absence of accepted reference material and an available, legally enforceable performance standard, there is no basis for comparing clinical trials on the Abbott product with clinical trials on other AFP products.

The assay is a type of RIA in which nonradioactive AFP in patient specimen or standard competes with a constant amount of 1.25 I AFP for binding sites in a limited amount of AFP antiserum. Thus, the percentage of radiocative AFP bound to antiserum is inversely proportional to the concentration of AFP in the specimen. The antiserum bound AFP (both radioactive and nonradioactive) is separated from the unbound AFP by various methods, e.g., polyethylene glycol separation in the Abbott Kit. The radioactivity in this complex is measured with a gamma scintillation counter. The exact concentration of AFP in the specimen is determined by comparison with the curve generated from measurement of the known standards.

Factors other than NTD that can influence AFP levels are fetal-maternal hemorrhage into amniotic fluid, multiple pregnancies, impending intrauterine death of the fetus, trophoblastic disease (a disease that affects the tissue attaching the ovum to the uterine wall), germ cell tumors, hepatoma (a tumor of the liver) and severe liver disease, exomphalos (an umbilical

hernia), congenital nephrosis (kidney disease), esophageal atresia (closing of the esophagus), and sacro-coccygeal teratoma (tumor of the sacroiliac) and gastroschisis (performation of the wall of the abdomen). These conditions must be ruled out before making a diagnosis of NTD.

For optimal results, the serum sample for AFP analysis should be drawn during the period from 16 to 18 weeks gestational age. In the patient with an elevated maternal serum AFP value, the patient's obstetrical history is checked and accurate gestational age is determined with the aid of ultrasonography. Ultrasonography or amniography also can confirm larger NTD open lesions. A single maternal serum AFP analysis is not a definitive diagnostic test for NTD. A patient with an elevated serum AFP level should have an additional serum test within a week. After two tests show raised serum AFP values, there should be confirmatory tests of the amniotic fluid for AFP elevation.

Amniocentesis does not appear to present a substantial risk to the patient or the fetus. The rate of spontaneous abortions following aminocentesis performed after ultrasonography is less than 1 percent (Ref. 1). This rate approximates the normal rate of spontaneous abortions when aminocentesis has not been performed. (A higher spontaneous abortion rate following amniocentesis was reported in a study in the United Kingdom in which ultrasonograph did not always precede amniocentesis (Ref. 2)).

Other diagnostic methods, e.g., fetoscopy (visualizing a fetus through a microcamera inserted into the amniotic sac), are now in investigational stages in a few medical centers in the United States. These procedures can be used as adjuncts to ultrasonography and amniograhy for the confirmation of NTD in a limited number of cases.

Fetoscopy allows direct visualization of the fetus and provides a means of obtaining fetal blood and tissue samples for karyotype analysis for diagnosis of genetic disorders. Though still in the investigational stage, fetoscopy may become a useful tool in confirming NTD.

An extensive collaborative study was conducted in the United Kindom to evaluate the utility of AFP in screening for and diagnosing NTD (Ref. 3). At 16 to 18 weeks of pregnancy, 88 percent of cases of anencephaly, 79 percent of cases of open spina bifida, and 5 percent of unaffected singleton pregnancies have maternal serum AFP levels equal to or greater than 2.5 times the median for unaffected singleton pregnancies. Investigators in the United States also have found AFP determination useful in diagnosing NTD (Ref. 4).

The Immunology Panel's specific comments on, and criticisms of, the petitioner's AFP test performance data are listed below. The Panel believes that these concerns can be addressed by additional information or studies.

1. No details are presented on the source of AFP prepared from human hepatoma serum.

2. Investigations leading to the detection of fatty acids in the AFP preparation are not discussed.

3. Because lyophilized AFP may degrade, studies of the effect of lyophilization on AFP should have been conducted.

4. The significance of the results of electrophoresis and the reagents shown in the submission is not discussed clearly.

5. Crystallization of AFP has little significance in immunochemical work. No mention is made of the water content of this and other AFP preparations.

6. The reference control (27) is spiked human serum while standards are ascitic fluid, diluted with borate buffer, calf serum and Bovine Gamma Globulin (BGG). No attempt has been made to use the same diluting vehicle.

7. The use of 21 percent polyethylene glycol (separation step), which is a highly viscous material, may present problems in pipetting, thereby giving erroneous results.

8. The petitioner estimates that it has a 5-year supply of tested antisera. How this estimate was arrived at and how stable this material will be at the end of 5 years are not discussed.

9. Although specificity of the antiserum was determined by testing with 10 potential cross-reacting proteins, the testing did not include such proteins common in pregnancy as human chorionic gonadotropin, human placental lactogen, and hemoglobin F. In the tested proteins, gammaglobulin appears to be an inhibitor (30 percent low value), and alpha-2-glycoprotein gives a value that is 15 percent too high. No explanation is given for these cross reactions.

10. The poor stability of one lot is not clearly explained.

11. All clinical data submitted were from retrospective studies. Adequate information is not given on how the samples were stored frozen and whether any follow-up studies were conducted on the donors of these samples as to the accuracy of the determination of the presence or absence of NTD.

Identification of Risks to Health

The Panel noted that the following risks to health may be presented by this device:

1. Incorrect diagnosis of normality and absence of NTD may lead to the birth of a severely deformed, critically ill child.

2. Incorrect diagnosis of NTD may lead to the abortion of a normal fetus.

Additional Findings

The Panel recommended that the device be classified into class II and that a performance standard be developed to assure the safety and effectiveness of the device. The Panel recommended that development of this standard be a high priority. Priority was established in accordance with the medical significance of this device relative to other devices.

At the suggestion of the Panel's consumer representative, the Panel recommended that FDA require manufacturers of AFP diagnostic kits to include appropriate patient information which warns the patient that when abnormal AFP levels are detected in the patient's serum or amniotic fluid, additional tests should be performed before a diagnosis of NTD is made.

Agency's Statement of Disagreement

The agency has reviewed the Panel's recommendation and reasons and the supporting data submitted by the petitioner. The agency disagrees with the Panel's recommendation and intends to deny the petition to reclassify the device into class II.

The results from a test for AFP may be used in deciding whether to carry a fetus to term or to consider an abortion. Accordingly, the device is for a use which is of substantial importance in preventing impairment of human health and presents a potential, unreasonable risk. Misdiagnosis could lead to the decision to terminate pregnancy, resulting in the abortion of a normal fetus. Conversely, an erroneous test result may lead to the conclusion that a fetus is normal when, in fact, it has severe NTD. Although FDA is aware of the existence of data, in the petition and elsewhere, that would assist in the development of a performance standard, the agency is not convinced that a standard would provide reasonable assurance of the safety and effectiveness of the device if it were classified into class II. Moreover, because an acceptable performance standard is not now available, only general controls are available to regulate products measuring AFP. These controls alone are insufficient. Accordingly, the agency has concluded that the device meets the criteria for class III in section 513(a)(1)(C) rather than the criteria for class II in section 513(a)(1)(B).

AFP assay is a critical diagnostic test for NTD. Studies show that, in assays both of serum and of amnoitic fluid, there is an overlap between the distri-

bution ranges of upper AFP values in normal pregnancies and lower AFP values in abnormal (NTD) pregnancies. At a 2.5-cut-off level between the mean normal values and the mean abnormal values, the detection rate will be 88 percent for anencephaly and 79 percent for open spina bifida with 5 percent false positives (Ref. 3).

Studies have shown that interassay and intra-assay variance is greater in amniotic fluid assay than in maternal serum assay. There also is a wide variation of AFP values in amniotic fluid samples assayed in different laboratories, including the petitioner's (5.9-24.4 micrograms/milliliter (μg/ml) as the normal range and 31.4-606.8 μg/ml as the abnormal range). Assignment of numerical values to positives and negatives and determination of false positive and false negative rates are dependent upon use of common reference standards, reagents, and techniques, which are not now available. The false positive rate can be kept to a minimum by use of judiciously chosen cut-off values. Accuracy and precision in the amniotic fluid assay similar to accuracy and precision in the maternal serum AFP assay may be necessary.

The concentrations of AFP in the pregnant woman's serum vary with the gestational age. The effectiveness of AFP screening depends on the accuracy of determining the gestational age. Although ultrasonography aids in the determination of gestational age, some hospitals in this country do not have access to sophisticated ultrasonography equipment. It is possible that erroneous gestational age determination may falsely increase the number of fetuses with indicated NTD. Conversely, if ultrasonography is not done and gestational age is erroneously estimated in normal pregnancies, AFP tests may show high levels of AFP exceeding the given mean values. The petitioner did not state how FDA could assure that ultrasonography or equivalent procedures, i.e., amniography, would be used for determining gestational age.

The agency notes that there is a risk, albeit low, involved in performing amniocentesis in order to obtain amniotic fluid for further analysis (Refs. 1 and 2). Moreover, use of the AFP test will lead to increase use of other potentially hazardous diagnostic techniques, e.g., fetoscopy, that are analyzed to confirm NTD diagnosis. If serum AFP level is erroneously reported to be elevated, the risks of injury to the fetus and mother from amniocentesis and fetoscopy are unwarranted.

It is evident that the Panel had serious concerns about this product, even though the Panel recommended that the device be reclassified into class II. For example, the Panel recommended that it evaluate premarket notification (section 510(k)) submissions for each new AFP diagnostic kit. The agency believes the most effective way to address the Panel's concern about adequate regulation of new products, including Panel reviews, would be for the agency to deny the reclassification petition and to retain diagnostic products for measuring AFP in class III. These actions would assure that no new products of this type are marketed except after panel review and FDA approval.

REFERENCES

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. National Institute of Child Health and Human Development (NIH) National Registry for Amniocentesis Study Group, "Midtrimester Amniocentesis for Prenatal Diagnosis: Safety and Accuracy," *Journal of the American Medical Association*, 236(13): 1471-1476, 1976.

2. MRC Working Party on Amniocentesis, "An Assessment of the Hazards of Amniocentesis," *British Journal of Obstetrics and Gynaecology*, 85-(Supp. 2), 1978.

3. Report of the UK Collaborative Study on Alphafetoprotein in Relation to Neural Tube Defects, "Maternal Serum-Alpha-Fetoprotein Measurement in Antenatal Screening for Anencephaly and Spina Bifida in Early Pregnancy," *Lancet*, 1:1323-1332, 1977.

4. Macri, J. N., R. R. Weiss, R. Tillitt, D. Balsam, and K. W. Elligers, "Prenatal Diagnosis of Neural Tube Defects," *Journal of the Amercian Medical Association*, 236(11):1251-1254, 1976.

Based upon the legislative history of the Medical Device Amendments of 1976, FDA has stated in § 860.7 (21 CFR 860.7) of the procedures for classification of medical devices, published in the FEDERAL REGISTER on July 28, 1978 (43 FR 32988) that it is a responsibility of each manufacturer and importer of the device to ensure that information exists to provide reasonable assurance that the device is safe and effective for its intended uses. Although any form of evidence may be submitted to show whether a device is safe and effective, the agency relies only on valid scientific evidence to determine that there is reasonable assurance that the device is safe and effective.

The agency requests that scientific evidence from which it may fairly and responsibly conclude there is reasonable assurance of safety and effectiveness of this device be submitted in the form of comments. FDA is allowing 60 days for comments on this notice, instead of the 30 days usually allowed for comments on notices concerning reclassification petitions. Four copies of comments should be submitted, except that individuals may submit one copy, and should be identified with Hearing Clerk docket number 78P-0167.

The petition, the transcript of the Panel meeting, and received comments may be seen in the office of the Hearing Clerk (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 23, 1979.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-6099 Filed 3-1-79; 8:45 am]

[4110-03-M]

ADVISORY COMMITTEE

Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meeting is announced:

Committee name	Date, time, and place	Type of meeting and contact person
Board of Tea Experts.....	March 12 and 13, 10 a.m., Rm. 700, 850 Third Ave., Brooklyn, NY.	Open public hearing March 12, 10 a.m. to 11 a.m.; open committee discussion March 12, 11 a.m. to adjournment, March 13, 10 a.m. to adjournment, Robert H. Dick, 850 Third Ave., Brooklyn, NY 11232, 212-965-5739.

General function of the committee. The Committee advises on establishment of uniform standards of purity, quality, and fitness for consumption of all teas imported into the United States pursuant to 21 U.S.C. 42.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the board.

Open committee discussion. Discussion and selection of tea standards.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1-hour long unless public participation does not last that long. It is emphasized, however, that the 1-hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wished to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner approves the scheduling of meetings at locations outside of the Washington, DC, area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Dated: February 21, 1979.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-5830 Filed 3-1-79; 8:45 am]

[4110-03-M]

[Docket No. 79N-0047]

ALEVAIRE

Hearing on Proposal To Withdraw Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: FDA is granting a hearing on the proposal to withdraw approval of the new drug applications for Alevaire, a muco-evacuant inhalant drug, and is announcing a prehearing conference, at which the date for the hearing will be set.

DATES: Prehearing conference on April 3, 1979, at 10 a.m.

Written notices of participation due by April 2, 1979.

Disclosure of data and information by May 1, 1979.

ADDRESSES: Prehearing conference will be in FDA Hearing Room 4A-35, 5600 Fishers Lane, Rockville, MD 20857; written notices of participation and disclosure of data and information to FDA Hearing Clerk (HFA-305), Rm. 4-65, 5600 Fishes Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Tenny P. Neprud, Compliance Regulations Policy Staff (HFC-10), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of August 13, 1974 (39 FR 29013), the Director of the Bureau of Drugs issued a notice of opportunity for hearing (formerly Docket No. FDC-D-141) on his proposed withdrawal of the new drug applications (NDA's) for Alevaire, NDA's 8-530 and 10-613 held by Winthrop Products, Inc., and Winthrop Laboratories, both subsidiaries of Sterling Drug, Inc., 90 Park Ave., New York, NY 10016 (hereinafter respondents). Having concluded that the safety and effectiveness of Alevaire should be considered at a formal evidentiary public hearing, the Commissioner of Food and Drugs is now ordering such a hearing.

The history of Alevaire as a marketed drug goes back to 1952, when NDA 8-530 became effective, at a time when the Federal Food, Drug, and Cosmetic Act required only proof of safety in order to obtain approval for a new drug. In 1956, NDA 10-613 (Alevaire for export) was also made effective. However, on July 17, 1968 (33 FR 10227), the FDA published an evaluation of a report (DESI 8530) received from the National Academy of Sciences—National Research Council, Drug Efficacy Study Group, on Alevaire. The report, whose conclusion FDA endorsed, stated that Alevaire was "ineffective" because there was no evidence that Alevaire had any effect on secretions in the lung beyond that of a liquid such as water in thinning secretions by simple dilution. The Commissioner, therefore, issued a notice of opportunity for hearing on December 6, 1969 (34 FR 19389). Respondents filed a written appearance and request for a hearing on January 20, 1970. However, on September 11, 1971 (36 FR 18337), the Commissioner issued an order denying a hearing and withdrawing approval of the NDA's on the grounds that, as a matter of law, substantial evidence of effectiveness was lacking.

Respondents appealed this order to the United States Court of Appeals for the Second Circuit, which, on motion by the FDA, remanded the matter to the agency for consideration of affidavits not previously taken into account. Therefore, the Commissioner, by FEDERAL REGISTER order dated February 10, 1972 (37 FR 3001), set aside the previous withdrawal notice and reinstated the NDA's for Alevaire.

On March 8, 1973 (38 FR 6305), following review of the affidavits, the Commissioner again published an order denying the request for a hearing and withdrawing the NDA's for Alevaire. Respondents then petitioned FDA to reconsider this withdrawal order. Following review of the petition for reconsideration, FDA concluded that the requests for hearing should indeed be reevaluated, and the order of withdrawal was terminated by order published in the FEDERAL REGISTER on June 18, 1973 (38 FR 15861). On August 9, 1973 (38 FR 21515), another order of withdrawal of approval of the NDA's for Alevaire and a denial of a hearing was published.

Respondents sought judicial review of the Commissioner's orders of March 8, 1973 and August 9, 1973. On May 2, 1974, the Court of Appeals for the Second Circuit set aside the order of August 9, 1973, and reinstated approval of both NDA's, holding that the notice of opportunity for hearing published December 6, 1969, was defective because it did not mention the combination drug theory as a ground for the proposed withdrawal of approval and that the respondents were, therefore, not given a meaningful opportunity to submit studies or data to contravene that theory. The appeal from the order published March 8, 1973, was dismissed as moot. *Sterling Drug, Inc.* v. *Weinberger,* 503 F.2d 675 (C.A. 2, 1974).

In light of the Court of Appeals' decision, the Director issued another notice of opportunity for hearing on August 13, 1974. Respondents then sought to enjoin FDA from withdrawing approval, which injunction was denied by the United States District Court for the Southern District of New York on the grounds that administrative remedies had not been exhausted. *Sterling Drug, Inc.* v. *Weinberger,* 384 F. Supp. 557 (S.D. N.Y. 1974). This decision was affirmed by the Court of Appeals. *Sterling Drug, Inc.,* v. *Weinberger,* 509 F.2d 1236 (C.A. 2, 1975).

In response to the August 13, 1974 notice of opportunity for hearing, respondents requested a hearing and submitted supporting material. The Commissioner is granting the hearing request.

As a result of information contained in submissions by the respondents and other information, safety questions concerning Alevaire have arisen. One of these questions involves the potential of tyloxapol to produce atherosclerosis in humans. Parenteral use of this compound in test animals has produced hyperlipemia, involving mainly cholesterol and phospholipids. In rabbits and dogs, tyloxapol administered parenterally caused some atherosclerosis. There is also some evidence that tyloxapol is teratogenic, embryotoxic, and decreases fertility in animals. Therefore, questions of safety as well as questions of Alevaire's effectiveness, should be resolved at the hearing.

The issues to be considered at the hearing will be:

1. Whether there are adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of Alevaire, on the basis of which it can fairly and responsibly be concluded that Alevaire is effective for its labeled conditions.

2. Whether Alevaire has, by all tests reasonably applicable, been proven safe for use as a muco-evacuant inhalant drug.

The Bureau of Drugs of the Food and Drug Administration and Winthrop Products, Inc., and Winthrop Laboratories, Divisions of Sterling Drug, Inc., will be parties to the hearing.

A prehearing conference will take place on April 3, 1979, at 10 a.m. in the FDA Hearing Room.

The Bureau of Drugs has filed with the Hearing Clerk a narrative statement of its position on the issues at the hearing and a summary of the evidence to be introduced in support of it. Also, the Bureau has filed with the Hearing Clerk as part of the administrative record copies of the NDA, published studies, and other data bearing on the question of whether Alevaire is safe and effective.

Interested persons may obtain a copy of the narrative statement from the office of the Hearing Clerk at the address given above and may examine the administrative record on Alevaire at that office from 9 a.m. to 4 p.m., Monday through Friday.

The hearing will take place in the FDA Hearing Room on a date to be set at the prehearing conference. Administrative Law Judge Daniel J. Davidson will preside. Written notices of participation must be filed with the Hearing Clerk not later than April 2, 1979.

The hearing will be open to the public. Any participant may appear in person, or by or with counsel, or with other qualified representatives, and may be heard with respect to relevant matters. Participants other than the Bureau of Drugs shall disclose data and information pursuant to 21 CFR 12.85 by May 1, 1979.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and 21 CFR 314.200(g), and under authority delegated to him (21 CFR 5.1), the Commissioner orders that a public hearing be held on the issues set forth in this notice.

Dated: February 28, 1979.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-6450 Filed 3-1-79; 8:45 am]

[4110-03-M]

FORT DODGE LABORATORIES

Nolvasorb Suspension and Cap-Tabs; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Director of the Bureau of Veterinary Medicine withdraws approval of two new animal drug applications (NADA's) which provide for the use of tablets and suspension containing dihydrostreptomycin with attapulgite and chlorhexidine for the treatment of calves for bacterial scours. Fort Dodge Laboratories, the sponsor of these applications, has requested this action.

EFFECTIVE DATE: March 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Donald A. Gable, Bureau of Veterinary Medicine (HFV-100), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.

SUPPLEMENTARY INFORMATION: Fort Dodge Laboratories, 800 5th St. NW., Fort Dodge, IA 50501, is sponsor of NADA 65-262V for Nolvasorb Suspension and NADA 65-396V for Nolvasorb Cap-Tabs. These applications, originally approved December 14, 1965 and November 12, 1965, respectively, provide for the use of several products containing dihydrostreptomycin with attapulgite and chlorhexidine for the treatment of calves for bacterial scours. These products were similar to those which were the subject of a National Academy of Sciences/National Research Council (NAS/NRC) review published in the FEDERAL REGISTER of August 22, 1970 (35 FR 13486). The firm was advised that these products must be brought into compliance with the conclusions of that review.

On August 17, 1978, the agency advised Fort Dodge Laboratories that if it did not respond in 30 days concerning bringing these products into compliance with the conclusions of the (NAS/NRC) review, the agency would proceed with action to withdraw approval of these applications. The firm was also informed that if it was not marketing the product, it could request a withdrawal of approval and waive an opportunity for hearing.

Fort Dodge Laboratories responded on August 30, 1978, stating that, after investigating the possibilities of generating the requested data, it had decided to discontinue manufacturing and marketing of the products. It requested a withdrawal of approval of the applications and waived an opportunity for hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84); and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice

is given that approval of NADA's 65-262V and 65-396V and all supplements for these products containing dihydrostreptomycin with attapulgite and chlorhexidine is hereby withdrawn, effective March 2, 1979.

Dated: February 2, 1979.

LESTER M. CRAWFORD,
Director, Bureau of Veterinary Medicine.

[FR Doc. 79-6100 Filed 3-1-79; 8:45 am]

[4110-03-M]

[Docket No. 79F-0004]

GENERAL MILLS CHEMICALS, INC.

Withdrawal of Petition for Food Additives

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the withdrawal without prejudice of the petition (FAP 5B3057) proposing safe use of dimerized oleic acid from animal sources as a component of resins and adhesives intended to contact foods.

FOR FURTHER INFORMATION CONTACT:

John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 384(b))), the following notice is issued:

In accordance with § 171.7 *Withdrawal of petition without prejudice* of the procedural food additive regulations (21 CFR 171.7), General Mills Chemicals, Inc., 2010 E. Hennepin Ave., Minneapolis, MN 55413 has withdrawn its petition (FAP 5B3057), notice of which was published in the FEDERAL REGISTER of January 10, 1975 (40 FR 2247) proposing that § 175.105 *Adhesives* (21 CFR 175.105), § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300), § 175.320 *Resinous and polymeric coatings for polyolefin films* (21 CFR 175.320), § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170), and § 177.1200 *Cellophane* (21 CFR 177.1200) be amended to provide for the safe use of dimerized oleic acid from animal sources as a component of resins and adhesives intended to contact food.

Dated: February 15, 1979.

SANFORD A. MILLER,
Director, Bureau of Foods.

[FR Doc. 79-5831 Filed 3-1-79; 8:45 am]

[4110-03-M]

[Docket No. 77N-0266; DESI 10996]

PROPOXYPHENE

Public Hearing

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice of Public Hearing.

SUMMARY: The Commissioner of Food and Drugs announces that FDA will hold a public hearing to receive information and opinions from interested persons on the issues of the safety and effectiveness of propoxyphene-containing drug products and whether additional regulatory action is needed in regard to these drugs. The hearing is part of an extensive review of propoxyhene undertaken at the direction of the Secretary.

DATES: The public hearing will be held on April 6, 1979, at 9 a.m. Written or oral notices of participation are due no later than March 23, 1979.

ADDRESS: The public hearing will be held at the Snow Room (Room 5051), HEW North Building, 330 Independence Avenue SW, Washington, D.C.

Written notices of participation should be sent to the Hearing Clerk (HFA-305), Food and Drug Administration, Department of Health, Education, and Welfare, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. Oral notices of participation will be accepted from persons who find insufficient the time available for submitting a written notice.

FOR FURTHER INFORMATION OR TO GIVE A NOTICE OF APPEARANCE ORALLY, CONTACT:

Robert Nelson, Bureau of Drugs (HFD-120), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3800.

SUPPLEMENTARY INFORMATION:

TERMINOLOGY

In this notice, DPX, the abbreviation for the dextrorotatory isomer (dextropropoxyphene) to which is attributed the analgesic effect of propoxyphene, is used to denominate propoxyphene-containing products generally. In some instances, the notice clearly specifies individual drug products or groupings of drug products containing DPX (e.g., combination drugs, or the drugs in the hydrochloride or the napsylate salt forms).

BACKGROUND

Propoxyphene (DPX) hydrochloride alone and in combination with aspirin, phenacetin, and caffeine was first marketed in 1957 by Eli Lilly & Co. (hereinafter referred to as "Lilly"). Under the law applicable at that time, the drug products (Darvon, Darvon Compound, and Darvon Compound-65) were approved for marketing based solely on evidence of safety. When demonstration of efficacy became a requirement in 1962, DPX was among the drugs reviewed for FDA by the National Academy of Sciences/National Research Council (NAS/NRC). In the FEDERAL REGISTER of April 8, 1969 (34 FR 6264), FDA announced the conclusion that DPX products (with the exception of the 32-milligram (mg) dose of propoxyphene hydrochloride) were effective "for the relief of mild to moderate pain."

In 1972, because of misleading claims made by Lilly, FDA required the firm to issue the following statements to physicians in a "Dear Doctor" letter: "There is no substantial evidence to demonstrate that 65 milligrams of Darvon is more effective than 650 milligrams of aspirin (two 5-grain tablets), and the preponderance of evidence indicates that it may be somewhat less effective. The preponderance of evidence indicates that Darvon is somewhat less potent than codeine. The best available evidence is that Darvon is approximately two-thirds as potent as codeine. Furthermore, there is no substantial evidence that, when administered at equianalgesic doses, Darvon produces a lower incidence of side effects than codeine."

In the FEDERAL REGISTER of December 27, 1972, (37 FR 28526) FDA announced a change in the labeling requirements for these products and acknowledged the limited effectiveness of the 32-mg dose of DPX hydrochloride in that: "recent studies have shown that this dose does have an analgesic effect in a certain fraction of the population with mild to moderate pain. While 32 milligrams of propoxyphene is a weak analgesic dose, only the physician attending a particular patient can determine by titrating the dose whether that individual patient is one of the minority who will respond adequately to the 32-milligram dose, or is one of the majority who will require at least 65 milligrams to achieve adequate analgesia."

Because of the abuse potential of DPX-containing products, they were placed in Schedule IV of the Controlled Substances Act in 1977. In an

April 7, 1978 FEDERAL REGISTER notice (43 FR 14739), FDA revised labeling requirements to add warnings on adverse reactions; warnings on interactions with alcohol, tranquilizers, sedative/hypnotics, and other central nervous system depressants; and information on management of overdosage.

In the early 1970's after approval of new drug applications (NDA's) based on bioavailability studies, Lilly marketed new products containing the napsylate salt of DPX, either alone (Darvon-N) or in combination with acetaminophen (Darvocet-N) or aspirin (Darvon-N with ASA).

Since then, more than 50 abbreviated new drug applications (ANDA's) have been submitted and approved for over 30 "me-too" manufacturers of DPX products marketed under a variety of trade names.

Through the years, DPX-containing products have become among the most frequently prescribed prescription drugs in the United States. They peaked in popularity from 1973 to 1975, when retail prescriptions totalled over 39 million annually. While the total number of prescriptions has declined in recent years (total for 1978 is 31 million), DPX products are still very popular. The ranking of Lilly's leading DPX products among the 200 most prescribed drugs for the years 1972 through 1977 is shown in Table 1.

TABLE 1.—*Rank Among the Top 200 Most Prescribed Drugs* [1]

	1972	1973	1974	1975	1976	1977
Darvocet-N (propoxyphene napsylate with acetaminophen)	.....	87	24	20	18	[2]12
Darvon 32 mg and 65 mg (propoxyphene hydrochloride)	35	47	68	71	78	93
Darvon Compound-65 APC	2	3	3	6	15	20

[1] Source: National Prescription Audit, IMS America.

[2] Darvocet-N was divided into two groups (50 and 100) for the year 1977 only. The 1977 rank for Darvocet-N 100 was 18; for Darvocet-N 50 it was 169. The 1977 ranking of 12 for Darvocet-N was derived by aggregating data for Darvocet-N 50 and 100, in order to simplify the comparison with previous years.

RECENT DEVELOPMENTS

During the 1970's clinical experience with DPX and publication of additional studies on the drug have given rise to some questions about its safety and efficacy. The reservations that FDA expressed in requiring certain labeling changes, described above, exemplify one result of such developments; another is the Drug Enforcement Administration's placement of DPX products in Schedule IV of the Controlled Substances Act.

On November 21, 1978, the Secretary of Health, Education, and Welfare was petitioned by the Health Research Group (HRG), Washington, D.C., to suspend approval of the NDA's for DPX-containing products under section 505(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355(e), on the ground that the continued marketing of these drugs represents an imminent hazard to the public health. Alternatively, HRG requested that if the Secretary did not suspend approval of the NDA's, he support HRG's petition to DEA that DPX be rescheduled as a Schedule II narcotic under the Controlled Substances Act (Ref. 1).

In response to the request of the Secretary for recommendations concerning these issues, FDA reviewed the following: Data cited by HRG; other available reports of studies on DPX in the scientific literature; information available from the Drug Enforcement Administration's Drug Abuse Warning Network (DAWN); data submitted by Lilly on fatalities resulting from DPX products; information presented before the Monopoly and Anticompetitve Activities Subcommittee of the the Select Committee on Small Business, U.S. Senate, on January 31, February 1 and 5, 1979; and information considered at FDA's Drug Abuse Advisory Committee meeting on February 13, 1979.

On February 15, the Secretary announced his decision that evidence currently available does not warrant his invoking the imminent hazard provision of the Act. However, he directed FDA to take several specific actions to warn the public of the nature and degree of risk now known to be associated with DPX use and abuse. In addition, the Secretary ordered FDA to hold a public hearing on the effectiveness, modes of use, and safety of DPX, and to conduct and complete a comprehensive study of the scientific data on DPX.

Highlights of material being studied by FDA are summarized in the following sections on "efficacy studies" and "safety".

EFFICACY STUDIES

PROPOXYPHENE

1. *Early studies on DPX seemed to establish that the drug was an effective, though mild, analgesic.* This was demonstrated by the conclusion of the NAS/NRC Panel on Drugs for Relief of Pain (Ref. 2). The chairman of the panel was Louis Lasagna, M.D., and expert in the field of clinical pharmacology and analgesia. William T. Beaver, M.D., a member of the panel and also an expert in the field of analgesia, concluded as follows in 1966: "In summary, dextropropoxyphene is a mild oral analgesic which is of questionable efficacy in doses lower than 65 milligrams. The drug is definitely less potent than codeine, the best available estimates of the relative potency of the two drugs indicating that dextropropoxyphene is approximately ½ to ⅔ as potent as the latter drug. Likewise, dextropropoxyphene in 32 milligram to 65 milligram doses is certainly no more, and possibly less, effective than the usually used doses of aspirin or A.P.C." (Ref. 3).

2. *Further reviews of 1970 and 1972 confirmed previous views of DPX as effective for mild to moderate pain.* The methodology for the clinical assay of analgesic efficacy was less sophisticated at that time, however, and many of the early studies would not meet today's criterial as adequate and well controlled (21 CFR 314.111). Thus, in a review paper published in 1970 by Miller et al., less than 10 percent of the published reports of DPX hydrochloride that were reviewed consisted of double-blind placebo comparisons. Miller cited 9 of 18 placebo-controlled trials in which DPX was more effective than placebo and concluded that "Propoxyphene is no more effective than aspirin or codeine and may even be inferior to these analgesics * * *. When aspirin does not provide adequate analgesia it is unlikely that propoxyphene will do so" (Ref. 4). Prior to the 1972 labelling changes, Dr. Beaver again reviewed for FDA the published scientific literature on DPX products and concluded that they were effective (Ref. 5).

At the time of these reviews, it appeared that most of the studies that did not demonstrate efficacy showed significant methodological problems or lack of assay sensitivity in that they were unable to distinguish between a codeine or aspirin "standard" and placebo. However, some recent studies have *not* shown these problems; they appear adequate and well controlled and repeatedly demonstrate the efficacy of other analgesics but have not done so with DPX.

3. *Three recent "negative" studies are cited in the HRG petition.* The first is a 1972 study by Moertel et al., in which DPX was compared to other marketed analgesics and placebo in a single-dose trail in cancer patients. DPX, ethoheptazine, and promazine were not superior to placebo in the relief of pain. Aspirin (650 mg) was found to be the most effective agent, followed by pentazocine, acetaminophen, phenacetin, mefenamic acid, and codeine (Ref. 6).

Hopkinson et al. in a study reported in 1973, compared single doses of DPX hydrochloride (65 mg), acetaminophen (650 mg), DPX plus acetaminophen, and placebo in 200 patients with postepisiotomy pain and found that DPX was statistically no better than placebo in the relief of pain (Ref. 7).

Gruber, in a two-dose study in 46 patients, compared DPX napsylate (50 to 100 mg) to codeine (30 or 60Mg) and placebo. He found that although there was no measurable difference between either active drug and placebo after the first dose, both drugs were superior in effect to placebo after the second dose (the drugs were not significantly different from each other) (Ref. 8).

4. *Not all recent reports are negative.* A 1978 study by Sunshine et al. found DPX napsylate at 200 mg (twice the recommended dose) to be significantly better than placebo. The lowest dose used (50 mg) was slightly better than placebo, but the usual dose (100 mg) was not tested (Ref. 9). These reports reinforce the conclusions of Beaver in 1966 that the results of DPX efficacy studies "of apparently suitable design . . . are to a degree contradictory" (Ref. 3).

In a second review by Miller in 1977, three studies showed DPX to be no more effective than placebo, and in five other DPX was as effective as the standard agent (Ref. 10). Beaver, in his recent Senate testimony, (Ref. 11), noted five recent positive studies (Baptisti, 1971; Berry 1975; Winter, 1973; Young, 1978; and Wang, 1974).

PROPOXYPHENE COMBINATIONS

1. *For DPX combinations,* the efficacy issue is not whether they are effective per se since it is presumed they are at least as effective as the aspirin, acetaminophen, or APC component. Rather, the question is whether the DPX component contributes to the efficacy of the combination, as required by 21 CFR 300.50 (fixed combination prescription drugs).

2. *A 1971 review of studies* by Beaver contains one of the earlier views on the efficacy of DPX combinations. Beaver noted several positive studies (Brooke and Brooke, 1966; Gruber, 1962; Marrs, 1959) and concluded that "although the design and results of available studies comparing combinations of DPX and either aspirin or APC with their individual constituents leave much to be desired, there is substantial evidence that these combinations are more effective than their constituents administered separately" (Ref. 5).

3. *Three references are cited in the HRG petition:* Hopkinson et al. found that there was no significant difference between the efficacy of acetaminophen alone and that of acetaminophen in combination with DPX. (Acetaminophen alone or in combination with DPX was significantly more effective than DPX alone and placebo (Ref. 7)).

In a 1974 study of the efficacy of combination drugs containing aspirin, Moertel et al. found that DPX napsylate (100 mg) did not significantly increase the analgesic effect of 650 mg aspirin. (Three compounds, codeine, pentazocine, and oxycodone, did significantly increase the aspirin's analgesic effect; in addition to DPX napsylate, other substances that did not increase aspirin's analgesic effect were ethoheptazine, pentobarbital, and caffeine.) Moertel noted the "conflicting evidence in the literature regarding the effectiveness of propoxyphene" and concluded that "it remains to be clearly established that its popularity reflects true analgesic effectiveness" (Ref. 12).

On the other hand, Bauer et al. in 1974 reported the results of a study that did show that the addition of DPX to the antiinflammatory analgesics (aspirin at three different doses and phenacetin at three doses, plus or minus caffeine) produced a significant increase in analgesia. This was a factorial efficacy study of DPX, aspirin, and APG in 610 subjects by two investigators in two separate institutions. DPX was never tested alone, however, and the increased analgesia of the DPX combinations was accompanied by a significant increase in side effects. The authors noted that the aspirin-containing products were packaged improperly, but the possible loss of efficacy due to pharmaceutical instability was not tested by chemical analyses. This positive multifactorial study of the contribution of DPX to the efficacy of DPX combinations is large, contains 10 medication test groups but no placebo control, and has other methodological weaknesses. According to the authors, the data obtained at the two institutions "differed significantly and possibly should not be pooled". Nevertheless, the results were pooled and no assessment of individual studies is possible. Moreover, the most effective treatment group used DPX napsylate at 200 mg (twice the recommended dose). There was also a failure of the relative potency assay assessment for the different doses of aspirin, thought possibly due to the instability of the aspirin due to the defective packaging (Ref. 13).

4. *A review by Miller* in 1977 found that only the Bauer study showed a contribution of DPX to the DPX-APC combinations. As noted above, however, the problems of design and analysis in the Bauer study are substantial. Miller concluded that in the interim since his 1970 review, no newly published studies showed that DPX contributed significantly to the efficacy of DPX-aspirin or DPX-acetminophen combinations. In fact, he found that the only recent well-designed studies (Moertel and Hopkinson) showed no contribution of DPX to the efficacy of the combinations (Ref. 10).

SAFETY

Concerns about the safety of DPX center primarily upon its relationship to the deaths of DPX users, rather than upon side effects associated with the drug, which have been thought to be relatively minimal when the drug is used as directed at the recommended doses. Concerning side effects, for example, Miller and Greenblatt reported that adverse reactions to DPX in hospitalized patients were infrequent and mild. The adverse reactions, although qualitatively similar, occurred less often than with codeine and other analgesics used in hospitalized patients. Standard tolerance studies in volunteers revealed no significant differences between DPX and placebo (Ref. 14). In contrast, Goodman and Gilman state that in doses equianalgesic to codeine it is likely that the incidence of side effects would be similar to those of codeine (Ref. 15).

Reports of deaths in connection with DPX use have frequently relied upon statistics received from the Drug Abuse Warning Network (DAWN) system. This system, from which data are cited in the HRG petition, is a large-scale data-collecting system, initiated in September of 1972 and operated for the Federal Government on contract by IMS America, Ambler, PA. DAWN collects data from over twenty large metropolitan areas in the continental United States and tabulates them as the number of "mentions" of a drug after persons have been in contact with or treated by one of three types of facilities: emergency rooms in non-Federal short-term general hospitals (as defined by the American Hospital Association), offices of medical examiners or coroners, and crisis intervention centers. An "episode" is either a drug-related death or a drug-related visit to an emergency room, and a "mention" is the report of a drug associated with an episode. If three drugs were reported for one episode, for example, three drug mentions would be recorded. Certain analytical problems may arise because of factors such as the lack of precision in reporting (e.g. the names of the drugs involved may be given to an emergency room in jargon that makes it impossible to assign the mention precisely to a particular drug or drugs) and the limitations in the system itself (e.g. the number and characteristics of the facilities reporting to the DAWN

system have not remained constant). Despite these problems, DAWN data are regarded as useful in identifying trends or indicating the development of drug problems. Although the data are not measures of the absolute size of a drug problem, they illuminate aspects of the nature of such a problem, and are helpful in making comparisons among drugs. The DAWN data which follow include only mentions from emergency rooms and medical examiners or coroners, excluding crisis intervention center reports. Although for many analyses it is appropriate to limit the data for a given period to that reviewed from consistent reporters, that was not done in this case because of the importance of not omitting any useful information.

Table 2 compares DAWN data on coroners' reports of deaths (associated with DPX alone or in conjunction with other factors) with data on emergency room visits. Although there is a slight increase in deaths in 1977 compared with the previous 3 years, this difference is of questionable significance. In most instances, other substances (e.g. tranquilizers) are also implicated in the deaths.

TABLE 2.—*Coroners' Reports and Emergency Room Visits in Which Propoxyphene (DPX) is Mentioned*[1]

Year	Coroners' reports			Emergency room visits		
	Total	DPX only	Percent	Total	DPX only	Percent
1974	574	155	27.0	3,565	1,352	37.9
1975	582	137	23.5	3,508	1,259	35.9
1976	477	116	24.3	3,572	1,318	36.9
1977	531	179	33.7	3,434	1,292	37.6

[1]Source: DAWN data, IMS America.

Comparisons on safety of DPX and other drugs are shown in Tables 3 and 4. Not only are total DAWN mentions (coroner and emergency room) for the drugs provided, but also comparisons indicating the ratios of DPX-associated deaths to prescriptions dispensed. The data indicate that DPX is the most frequently mentioned single drug on coroner's reports. However, the ratio of DPX-associated deaths (coroners' mentions) to dispensed prescriptions is lower than that for the barbiturates, ethchlorvynol, glutethimide, methaqualone, amitriptyline, doxepin, and pentazocine, as shown in Table 3. When comparisons are made according to drug groupings, as in Table 4, the propoxyphene ratio is considerably lower than that for three other drug groups ("barbiturates," "other sedative/hypnotics," and "antidepressants").

TABLE 3—COMPARISON OF PROPOXYPHENE WITH OTHER DRUGS; ASSOCIATIONS WITH EMERGENCY ROOM (ER) MENTIONS AND CORONER MENTIONS (DEATHS), 1977*

Drug	Total Rx's (millions)	Emergency room mentions	Coroner mentions	Coroner mentions/ER mentions	Coroner mentions/million Rx's	Rank: Coroner mentions/million Rx's
BARBITURATES						
Secobarbital	1.2	2,457	350	.14	292	3
Pentobarbital	1.3	946	272	.29	209	4
Secobarb/ Amobarb	1.0	3,093	326	.11	326	2
Amobarbital	0.3	130	123	.95	410	1
Phenobarbital	7.8	2,989	254	.08	32.6	9
BENZODIAZEPINES						
Diazepam	53.6	21,678	418	.02	7.8	18
Chlordiaze-poxide	13.0	3,411	54	.02	4.2	22
Flurazepam	13.6	4,643	80	.02	5.9	19
OTHER SEDATIVE/HYPNOTICS						
Meprobamate	8.2	1,238	95	.08	11.6	16
Methaqualone	1.0	2,405	62	.03	62.0	6
Ethchlorvynol	1.7	2,202	135	.06	79.4	5
Glutethimide	1.8	639	94	.15	52.2	7
Chloral hydrate	2.0	618	35	.06	17.5	13
TRANQUILIZERS/ANTIDEPRESSANTS						
Trifluoperazine	3.0	1,072	6	.01	2.0	24
Thioridazine	6.8	2,175	74	.03	10.9	17
Chlorpromazine	4.7	2,404	64	.03	13.6	15
Amitriptyline	9.0	3,281	386	.12	42.9	8
Imipramine	4.6	921	74	.08	16.1	14
Doxepin	4.1	1,397	104	.07	25.4	10
Haloperidol	1.6	1,058	3	.01	1.9	25

TABLE 3 (continued)

Drug	Total Rx's (millions)	Emergency room mentions	Coroner mentions	Coroner mentions/ER mentions	Coroner mentions/million Rx's	Rank: Coroner mentions/million Rx's
ANALGESICS						
Morphine	0.6	134	0	-	-	
Codeine & codeine compounds	49.8	3,597	274	.08	5.5	20
Fiorinal	7.5	1,204	0	-	-	-
Fiorinal w/ codeine	2.3	130	1	.01	.43	26
Pentazocine	3.5	1,079	71	.07	20.3	11
Pentazocine compound	.7	4	0	-	-	-
Aspirin	NA	7,184	156	.02	-	-
Acetaminophen	NA	2,559	77	03	-	-
PROPOXYPHENE	33.5	4,179	607	.15	18.1	12
OTHER						
Diphenhydramine	10.8	1,113	23	.02	2.1	23
Diphenyl-hydantoin	8.6	2,271	41	.02	4.9	21
Methapyrilene/ scopolamine (OTC)	NA	1,725	1	-	-	-

*Source: DAWN and NPA data.

TABLE 4—COMPARISON OF PROPOXYPHENE WITH OTHER DRUG GROUPINGS; ASSOCIATIONS WITH DEATHS, 1977*

Drug group	Total Rx's	Coroner mentions	Coroner mentions/ million Rx's	Group rank
BARBITURATES**	3.8	1,071	282	1
Secobarbital				
Pentobarbital				
Amobarbital				
Seco/amobarbital				
OTHER SEDATIVE/ HYPNOTICS**	6.5	326	50	2
Methaqualone				
Ethchlorvynol				
Glutethimide				
Chloral hydrate				
BENZODIAEPINES	80.2	552	7	6
Diazepam				
Flurazepam				
Chlordiazepoxide				
MAJOR TRANQUILIZERS	16.1	147	9	5
Chlorpromazine				
Thioridazine				
Trifluoperazine				
Haloperidol				
ANTIDEPRESSANTS	17.7	564	32	3
Amitriptyline				
Imipramine				
Doxepin				

TABLE 4 (continued)

Drug group	Total Rx's	Coroner mentions	Coroner mentions/ million Rx's	Group rank
OTHER COMMON PRESCRIPTION ANALGESICS Fiorinal with or without codeine Codeine with or without other analgesics Pentazocine with or without other analgesics	63.8	346	5	7
PROPOXYPHENE with or without other analgesics	33.5	607	18.1	4

*Source: DAWN and NPA data.

**Phenobarbital and meprobamate were intentionally excluded since their predominant use, as anticonvulsant and "muscle relaxant," respectively, differs from other drugs in the same pharmacologic category.

[4110-03-M]

The circumstances under which the DPX-related deaths occurred are a matter of special interest. Particularly relevant are considerations such as whether other drugs or alcohol were also involved, whether an overdose of DPX was taken, and to what extent the deaths were intentional. Although it is impossible to determine precisely the answers to such questions, some generalizations can be made from available data.

1. DPX is a common cause of drug-associated death. These cases involve both suicide and accidents, but a majority of the deaths appear to be intentional. Thus, a tabulation of the 72 DPX-related deaths reported in 1971-1975 by the San Francisco Coroner's Office indicates that 58 perent of them were suicides (this compares with 10 codeine-related deaths, of which 50 percent were suicides). Analysis of data available from different sources, as shown in Table 5, supports the hypothesis that a substantial proportion of DPX deaths are the result of use by those in younger age groups, for suicidal purposes or associated with abuse. Thus, 8-22 percent of the deaths are in the 10-19 age group, which accounts for only 7 percent of the prescriptions; 48-58 percent of the deaths are in the 20-39 age group with approximately 30 percent of the DPX prescriptions. Regardless of age considerations, however, it is apparent that DPX is one of the prescription drugs most frequently associated with suicide and accidental deaths, ranking behind only the barbiturates as a group in total number and behind only barbiturates, other sedative-hypnotics and antidepressants in deaths per million prescriptions dispensed (Table 4).

[4110-03-C]

TABLE 5—PROPOXYPHENE: REPORTED PRESCRIBING, EMERGENCY ROOM VISITS, AND ASSOCIATED DEATHS, BY AGE

Category	Percentages by age groups						
	0-9	10-19	20-29	30-39	40-49	50-59	60 and over
Reported prescribing of propoxyphene[1]	1	7	30[6]		26[7]		35
Emergency room visits for suicide gestures[2] Total = 505	-	37	40	11	6	4	1
DAWN emergency room data[3] Total = 16, 113	-	24	40	19	10	6[8]	
DEATHS							
FDA: Probable suicides reported[4] Total = 173 50%M:50%F	-	22	37	20	14	8	-
FDA: Probable accidental deaths[4] Total = 48 40%M:60%F	13	13	34	17	6	2	-
Finkle data: Propoxyphene-associated deaths[5] Total = 1,022 45%M:55%F	2	12	27	21	20	11	8
DAWN medical examiner data[3] Total = 1,964	-	8	35	23	17	17[8]	

[1]Source: National Disease and Therapeutic Index, IMS America.
[2]Source: FDA National Clearinghouse for Poison Control Centers.
[3]Source: Drug Enforcement Administration, Drug Abuse Warning Network, Jan. 1975 - Aug. 1978.
[4]Source: FDA Spontaneous Adverse Reaction Reporting Program. (In 15 percent of the reports age was not reported.)
[5]Reference 17.

[6]This figure is for the age group 20 to 39.
[7]This figure is for the age group 40 to 59.
[8]This figure is for the age group 50 and over.

2. A majority of the DPX-related deaths appear to have occurred when DPX was taken in conjunction with alcohol or other drugs. Thus, information from various sources, shown in Table 6, indicates that in about 12-28 percent of the deaths, DPX alone was involved; in the others alcohol and/or other drugs were also present.

TABLE 6—DEATHS ASSOCIATED WITH PROPOXYPHENE (DPX)

Category	Source of Data						
	Baselt et al.[1]	Hine et al.[2]	Finkle et al.[3]	FDA reports of accidental deaths[4]	DAWN medical examiner reports of accidental or unexpected deaths[5]		
					1975	1976	1977
Total cases	29	72	1,022	48	229	187	179
Years involved	1973-74	1971-75	1972-75	1969-77	1975	1976	1977
mean age	38	35	25	30			
percent male	58	56	45	40			
Due to DPX alone							
number	8	14	244	15	56	27	29
percent of total	28	19.6	24	27	24	12	16
Due to DPX and ethyl alcohol							
number	5	23	238	15	36	40	29
percent of total	17	32	23	31	16	21	16
Due to DPX and other drug only							
number	8	17	349	10	101	87	79
percent of total	28	23.6	34	21	44	47	44
Due to DPX and ethyl alcohol plus other drug(s)							
number	8	18	191	6	32	26	28
percent of total	28	25	18	12	14	14	16

[1]Reference 16.
[2]Reference 18.
[3]Reference 17.
[4]FDA Spontaneous Adverse Reaction Reporting Program.
[5]Drug Enforcement Administration, Drug Abuse Warning Network.

[4110-03-M]

3. At present there is no clear evidence of deaths attributed to DPX products alone when taken in recommended doses and without alcohol or tranquilizers also being involved. There are, however, several "accidental" dfeaths that have occurred apparently as a result of the consumption of DPX in quantities only slightly in excess of recommended therapeutic dosage, usually combined with alcohol or tranquilizers or both. Dr. Larry Lewman, Multnomah County (Oregon) Medical Examiner, in testimony before the Senate Subcommittee cited previously in this notice, presented data in support of this possibility (Ref. 11). While reports such as this are very infrequent, given the wide availability of DPX, they raise concern that death of persons taking the drug at or near the recommended doses may be more common than is currently appreciated.

4. The mechanism of death in cases of DPX overdose is commonly attributed to respiratory depression, a typical action of narcotics. This theory is substantiated by a large number of case reports from a wide variety of sources. However, the possibility of a specific and primary cardiotoxic effect, independent of respiratory depression has been raised. The demonstration of dose-related progressive conduction block appears clear in experimental animals, and in some patients with acutely toxic overdoses there are reported electrocardiographic (ECG) changes. This is not unexpected in view of the local anesthetic activity of both DPX and its primary metabolite norpropoxyphene. It has been postulated that, with chronic dosing, DPX accumulates to near toxic levels and adversely affects myocardial conduction, but this has not been the experience in heroin addicts on long-term, high-dose DPX napsylate maintenance. Moreover, when there are ECG changes in DPX overdoses and the CNS depressant effects are reversed by naloxone, the ECG changes rapidly revert to normal when respiration returns (or is mechanically supported) and acidosis is corrected. Therefore, the cardiac changes are most likely secondary to hypoxia rather than norpropoxyphene toxicity, which would take at least several hours to be reversible. Moreover, as shown in Table 5, only a small percentage of the deaths are in the over 60 age group which accounts for 35 percent of the reported prescribing. This population would be presumably more sensitive to any cardiovascular toxicity associated with DPX, but the paucity of deaths in this age group is notable. Cardiotoxicity at a therapeutic dose has not been observed.

5. DPX can produce psychological and physical dependence of the opiate type when taken for an extended period of time. It will substitute for other opiates in addicted persons, but only to a limited extent. Because of the abuse potential of DPX, it was placed in Schedule IV of the Controlled Substances Act. The Health Research Group believes the restrictions of Schedule IV are not sufficient to protect the public from the dangers of DPX use and has proposed it be transferred to the most restricted control, Schedule II.

REFERENCES

The following items specifically cited in this notice, as well as a number of other items related to the DPX hearing, are on file and available for inspection in the office of the Hearing Clerk, at the address specified at the beginning of this notice.

1. Petition from Health Research Group, Washington, D.C., to Secretary J. Califano, November 21, 1978.

2. National Academy of Sciences/National Research Council; Report of Panel on Drugs for the Relief of Pain on Darvon Compound, NDA 10-996.

3. Beaver, W. T., "Mild Analgesics, A Review of Their Clinical Pharmacology (Part II)," *American Journal of Medical Science*, 25:576-599, 1966.

4. Miller, R. R., A. Feingold and J. Paxinos, "Propoxyphene Hydrochloride," *Journal of American Medicine*, 213(6):996-1006, 1970.

5. Beaver, W. T., Memorandum to Henry E. Simmons, Director, Bureau of Drugs, Food and Drug Administration, May 18, 1971.

6. Moertel, C. G., D. L. Ahmann, W. F. Taylor, and N. Schwartau, "A Comparative Evaluation of Marketed Analgesic Drugs," *The New England Journal of Medicine*, 286:813-15, 1972.

7. Hopkinson, J. H., IV, et al., "Acetaminophen Versus Propoxyphene Hydrochloride for Relief of Pain in Episiotomy Patients," *The Journal of Clinical Pharmacology*, 113:251-263, 1973.

8. Gruber, C. M., Jr., "Codeine and Propoxyphene in Postepisiotomy Pain," *The Journal of the American Medical Association*, 237:2734-35, 1977.

9. Sunshine, A., J. Slafta and C. Gruber, Jr., "A Comparative Analgesic Study of Propoxyphene, Fenoprogen, the Combination of Propoxyphene and Fenoprofen, Aspirin, and Placebo," *The Journal of Clinical Pharamacology*, 18:556-563, 1978.

10. Miller, R. R., "Propoxyphene, A Review," *American Journal of Hospital Pharmacy*, 34:413-423, 1977.

11. Propoxyphene Hearings (January 31, February 1 and 5, 1979) of the Monopoly and Anticompetitive Activities Subcommittee of the Select Committee on Small Business, U.S. Senate.

12. Moertel, C. G., D. L. Ahmann, W. F. Taylor, and N. Schwartau, "Relief of Pain by Oral Medications," *The Journal of the American Medical Association*, 229(1):55-59, 1974.

13. Bauer, R. O., A. Baptisti, Jr., and C. M. Gruber, Jr., "Evaluation of Propoxyphene Napsylate Compound in Postpartum Uterine Cramping," *The Journal of Medicine*, 5:317-328, 1974.

14. Miller, R. and D. J. Greenblatt, "Drug Effects in Hospitalized Patients: Experiences of the Boston Collaborative Drug Surveillance Program, 1966-1975," John Wiley & Sons, New York, pp. 162-164, 1975.

15. Jaffe, J. H. and W. R. Martin, "Narcotic Analgesic and Antagonists," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., Edited by Goodman, L. S., and A. Gilman, MacMillan Publishing Co., Inc., New York, pp. 270-271, 1975.

16. Baselt, R. C. and J. A. Wright, J. E. Turner, and R. H. Cravey, "Propoxyphene and Norpropoxyphene Tissue Concentrations in Fatalities Associated with Propoxyhene Hydrochloride and Propoxyphene Napsylate," *Archives of Toxicology*, 34:145-152, 1975.

17. Finkel, B. S., K. L. McCloskey, G. F. Kiplinger, and I. F. Bennett, "A National Assessment of Propoxyphene in Postmortem Medicolegal Investigation, 1972-1975," *Journal of Forensic Sciences*, 21(4):706-742, 1976.

18. Hine, C. H., J. A. Wright, D. J. Allison, B. G. Stephens, and A. Pasi, Analysis of Fatalities due to Acute Narcotism in a Major Urban Area (unpub.).

PUBLIC HEARING

The Food and Drug Administration announces that a public hearing will be held to obtain additional information and recommendations relevant to consideration of further regulatory actions on DPX-containing drug products. The hearing is open to all interested persons. Participants are invited to comment on the material presented in this notice and to contribute any additional well-documented information that will be of use to the Commissioner in evaluating efficacy, assessing risks, and analyzing risk/benefit considerations associated with the use of DPX and DPX-containing combinations. Specifically, the objective of the hearing will be to gather evidence on the following issues:

1. Is there "new evidence of clinical experience, not contained in the NDA's or not available to the Food and Drug Administration until after such applications were approved, or are there tests by new methods, or tests by methods not deemed reasonably applicable when the applications were approved which when evaluated together with the evidence available when the applications were approved, reveal that the drug is not shown to be safe for use under the conditions of use upon the basis of which the applications were approved"? (21 CFR 314.115(b)(2)). Specifically, how many of the deaths associated with DPX are suicides; how many are accidents resulting from abuse or misuse; and how many are accidents resulting from normal use? Are there any deaths resulting from DPX taken at recommended doses, either alone or in combination with alcohol and other drugs? What are the blood levels of DPX and

its major metalbolite, norpropoxyphene, that are associated with death, and what is the relationship of these levels to those observed when the drug is taken at recommended doses? What is the mechanism of death in these cases? Is it only respiratory depression, or is there a previously unrecognized effect on cardiac conduction? Are there differences in risk among DPX-containing salts and combinations?

2. Is there "lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof"? (21 CFR 314.115(b)(3)). Specifically, is there scientific evidence that DPX contributes to the analgesic effect of combination products containing aspirin, acetaminophen, or APC, as required by the FDA fixed-combination policy? (21 CFR 300.50(a)). Are there any differences in effectiveness or other benefits among particular salts or combinations of DPX?

In addition, the agency is interested in receiving testimony on whether additional regulatory action is needed at this time with respect to DPX-containing products. Such action could include, but is not necessarily limited to, removal of some or all of these products from the market, rescheduling under the Controlled Substances Act to Schedule III or II, the placing of new warnings in the labeling for physicians or a limitation in the labeling to use in patients who cannot tolerate other analgesics, and/or providing patients with warnings or other information. In a related, though separate, proceeding, the issue of whether DPX should be placed in Schedule II of the Controlled Substances Act, 21 U.S.C. 801 et seq. is being considered by the FDA's Drug Abuse Advisory Committee, which held an initial meeting on the subject on February 13, 1979 and will hold its second and final such meeting on April 17, 1979 to enable FDA to meet a June 1, 1979 deadline set by the Secretary of Health, Education, and Welfare for recommendations on scheduling of DPX. Because that issue is being fully considered in that particular context, it is requested that participants at this hearing not focus primarily on the scheduling issue.

The record of another related proceeding, the testimony at the propoxyphene hearings on January 31, February 1 and 5, 1979 of the Monopoly and Anticompetitive Activities Subcommittee of the Select Committee on Small Business of the U.S. Senate, is already the subject of review and study by FDA. For that reason, it will be unnecessary for participants to duplicate any of that testimony at this hearing.

The hearing will begin at 9 a.m. on April 6, 1979, in the Snow Room (Room 5051), HEW North Building, 330 Independence Ave., SW., Washington, D.C. The presiding officer will be Ronald Kartzinel, M.D., Ph. D., Director of the Division of Neuropharmacological Drug Products, Bureau of Drugs, FDA.

Persons wishing to comment or present views at the hearing must file by March 23, 1979, a written notice of participation under 21 CFR 15.21 with the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, MD 20857. The Envelope containing the notice should be prominently marked "Propoxyphene Hearing." The notice of participation should contain the following: Hearing Clerk Docket No. 77N-0266; the name, address and telephone number of the person desiring to make a statement; business or professional affiliation, if any; the subject of the presentation; and the approximate amount of time being requested for the presentation.

A notice of participation may be telephoned to Mr. Robert Nelson, 301-443-3800 by persons who find there is insufficient time to submit the required information in written form.

Individuals and organizations with common interests are urged to consolidate or coordinate their presentations. The agency may require joint presentations by persons with common interests. It will allocate the time available for the hearing among the persons who properly file a notice of participation and will make a schedule of the hearing available to those persons. Persons may use their allotted time on any aspect of the proposed action, consistent with the conduct of a reasonable and orderly hearing. Formal written statements on the issues may be presented to the presiding officer on the day of the hearing for inclusion in the record. The time available for the hearing may make it impossible to accomodate all those desiring to appear. The Commissioner encourages those not appearing in person to submit their information in written form for inclusion in the administrative record of the drug.

The hearing will be open to the public. At the discretion of the presiding officer, and as time permits, any interested person in attendance may speak on matters relevant to the issue under consideration after scheduled parties have presented their views.

In order to permit time for all interested persons to submit data, information, or views, on the subject matter of the hearing, the administrative record of the public hearing will remain open for 45 days after the hearing is held.

Dated: February 26, 1979.

DONALD KENNEDY,
Commissioner of Food and Drugs.

[FR Doc. 79-6246 Filed 3-1-79; 8:45 am]

[4310-02-M]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

RECEIPT OF PETITION FOR FEDERAL ACKNOWLEDGMENT OF EXISTENCE AS AN INDIAN TRIBE

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 230 DM 2.

Pursuant to 25 CFR 54.8(a) notice is hereby given that the Jena Band of Choctaw Indians, c/o Mr. Clyde Jackson, Post Office Box 212, Trout, Louisiana 71371, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on February 1, 1979. The petition was forwarded and signed by Mr. Clyde Jackson, Chairman of the petitioning group.

This is notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be mail to the petitioner and other interested parties at the appropriate time.

Under Section 54.8(d) of the Federal regulations, interested parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs files.

The petition may be examined by appointment in the Division of Tribal Government Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Street, N.W., Washington, D.C. 20245.

FORREST J. GERARD,
Assistant Secretary—
Indian Affairs.

FEBRUARY 27, 1979.

[FR Doc. 79-6302 Filed 3-1-79; 8:45 am]

[4310-02-M]

RECEIPT OF PETITION FOR FEDERAL ACKNOWLEDGMENT OF EXISTENCE AS AN INDIAN TRIBE

FEBRUARY 27, 1979.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 230 DM 2.

Pursuant to 25 CFR 54.8(a) notice is hereby given that the Mashantucket

(Western) Pequot Indians, c/o Mr. Richard A. Hayward, Post Office Box 160, Ledyard, Connecticut 06339, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on January 15, 1979. The petition was forwarded and signed by Mr. Richard A. Hayward, chairman of the tribal council of the petitioning group.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be by mail to the petitioner and other interested parties at the appropriate time.

Under § 54.8(d) of the Federal regulations, interested parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs files.

The petition may be examined by appointment in the Division of Tribal Government Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20245.

RICK LAVIS,
Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 79-6301 Filed 3-1-79; 8:45 am]

[4310-84-M]

Bureau of Land Management

[NM 35775]

NEW MEXICO

Application

FEBRUARY 21, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Southern Union Gathering Company has applied for a right-of-way involving several two, four and six-inch natural gas pipelines across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 28 N., R. 11 W.,
Sec. 11, lots 2, 3, SE¼SW¼ and SE¼SE¼;
Sec. 14, N½N½;
Sec. 15, NE¼NE¼.
T. 29 N., R. 11 W.,
Sec. 18, lots 2, 3, NW¼NE¼ and E½NW¼;
Sec. 19, NW¼NE¼, E½NW¼ and NE¼SW¼;
Sec. 31, NE¼SE¼;
Sec. 34, lots 2, 3, NE¼SW¼ and NW¼SE¼;
Sec. 35, lot 4, NE¼NE¼, S½NE¼, N½NW¼, SE¼NW¼ and N½SW¼.
T. 29 N., R. 12 W.,
Sec. 11, NE¼NE¼, S½NE¼ and SE¼NW¼;
Sec. 12, NW¼NW¼;
Sec. 13, S½NE¼, S½SW¼, N½SE¼ and SW¼SE¼;
Sec. 23, N½NE¼, SW¼NE¼, NE¼SW¼, S½SW¼ and NW¼SE¼;
Sec. 24, NW¼NW¼.

These pipelines will convey natural gas across 9.53 miles of public lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-6205 Filed 3-1-79; 8:45 am]

[4310-84-M]

[NM 35780]

NEW MEXICO

Application

FEBRUARY 21, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Gas Company of New Mexico has applied for several 2-inch and 4-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 29 N., R. 11 W.,
Sec. 7, lot 4
Sec. 18, lots 1, 2 and E½SW¼
Sec. 19, W½NE¼, E½NW¼ and NW¼SE¼
Sec. 20, SW¼NE¼.
T. 29 N., R. 12 W.,
Sec. 2, N½SW¼
Sec. 11, SW¼NE¼
Sec. 12, NW¼NW¼, E½SW¼ and S½SE¼
Sec. 13, E½NE¼.
T. 30 N., R. 12 W.,
Sec. 34, SE¼NW¼.

These pipelines will convey natural gas across 4.22 miles of public lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-6206 Filed 3-1-79; 8:45 am]

[4310-84-M]

[NM 35768]

NEW MEXICO

Application

FEBRUARY 20, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Gas Company of New Mexico has applied for several 2-inch, 4-inch, 6-inch and 8-inch natural gas pipelines right-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 29 N., R. 10 W.,
Sec. 3, lots 7, 9, 10, 11, 12, 15, 17, 18 and 19
Sec. 4, lots 9, 10, 11 and 12
Sec. 5, lots 12, 13, 14, 15, 16, 18 and 20
Sec. 6, lots 16, 17, 18 and 19
Sec. 10, lots 2, 3, 4, 5, 6, 7, 8, 9, 11 and 12
Sec. 15, lots 1, 2, 3, 4, 5, 6, 7, 8 and 10
Sec. 16, lots 8, 9, 13 and 14
Sec. 22, SE¼NE¼, W½NW¼, SE¼NW¼, N½SW¼, NW¼SE¼
Sec. 23, N½
Sec. 24, SW¼NW¼
T. 30 N., R. 10 W.,
Sec. 34, lots 1, 3, 4, 5, 6, 7, 9, 10 and 11
Sec. 35, lots 5 and 6.

These pipelines will convey natural gas across 22.379 miles of public lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-6207 Filed 3-1-79 8:45 am]

[4310-31-M]

Geological Survey

KNOWN LEASING AREA (PHOSPHATE) SCHMID RIDGE, IDAHO

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451,

note), 220 Departmental Manual 2, and Secretary's Order No. 2948, Federal lands within the State of Idaho have been classified as subject to the competitive phosphate leasing provisions of the Mineral Leasing Act of February 25, 1920 (30 U.S.C. 211), as amended.

The name of the area, the effective date, and the total acreage involved are as follows:

(12) Idaho—Schmid Ridge (Idaho) Known Leasing Area (Phosphate); March 3, 1978; 10,780.93 acres.

A diagram showing the boundaries of the area classified for competitive leasing has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and the land description may be obtained from the Conservation Manager, Western Region, U.S. Geological Survey, 345 Middlefield Road, Menlo Park, California 94025.

Dated: February 15, 1979.

W. A. RADLINSKI,
Acting Director,
U.S. Geological Survey.

[FR Doc. 79-6208 Filed 3-1-79; 8:45 am]

[4310-70-M]

National Park Service

COLORADO NATIONAL MONUMENT

Partial Boundary Correction, Clarification, and Revision

Pursuant to the Act of June 10, 1977, Public Law 95-42 (91 Stat. 210) Section 5(ii),

The Secretary of the Interior is authorized to revise the boundary of an area of the National Park System by publication of a revised boundary map or other description in the FEDERAL REGISTER.

This publication pertains primarily to corrections and clarification of the description for a portion of the existing boundary of Colorado National Monument. Said boundary was established by Proclamation 3307, dated August 7, 1959, and amended by boundary revision published in the FEDERAL REGISTER, Vol. 43, No. 20, Monday, January 30, 1978, with accompanying boundary map numbered 119-80,006 which is dated January 1977.

Proclamation 3307 contained several errors in regard to reference points, distances and bearings, and map 119-80,006 supra was not drawn properly and did not depict the accurate boundary in part. Misinterpretation of the intended boundary has resulted. A recent cadastral survey of the east boundary of said monument furnished more correct information for describing certain portions of the boundary description contained herein.

The only part of the description contained herein which actually changes the boundary, as established by Proclamation 3307 and amended by the above-referenced FEDERAL REGISTER publication, is the inclusion of 7.38 acres of Public Lands—formerly known as Public Domain. These 7.38 acres of federally owned lands were never officially included into the monument due either to an error in the description or to an oversight. This parcel is described in paragraph one (1) below. Paragraph two (2) below contains the corrected description for a portion of the monument boundary including the additional 7.38 acres described in paragraph one (1) as follows:

1. Lands added to the monument by this publication pursuant to the act supra.

All that portion of lot 6, sec. 35, T. 11. S., R. 101 W., sixth principal meridian, not already included in the monument and more particularly described as being that portion of said lot 6 lying south of tract 39, T. 11 S., R. 101 W., sixth principal meridian; west of tract 74, T. 12 S., R. 101 W., sixth principal meridian and north of lot 7, sec. 2, T. 12 S., R. 101 W., sixth principal meridian containing 7.38 acres more or less.

2. Partial boundary description correction and clarification.

Beginning at the southwest corner of sec. 31, T. 11 S., R. 101 W., of the sixth principal meridian;

thence westerly one-half mile more or less to the south ¼ corner of sec. 36, T. 11 S., R. 101 W., sixth principal meridian;

thence northerly three-eighths of a mile more or less to the southeast corner of the NE¼NE¼SW¼ of said sec. 36;

thence westerly one-eighth of a mile more or less to the southwest corner of said NE¼NE¼SW¼;

thence northerly one-fourth of a mile more or less to the northwest corner of the SE¼SE¼NW¼ of said sec. 36;

thence easterly one-eighth of a mile more or less to the northeast corner of said SE¼SE¼NW¼;

thence northerly three and one-fourth miles more or less to a point S. 00°00'30" E., 516.11 feet from the north ¼ corner of sec. 13, T. 11 S., R. 102 W., sixth principal meridian;

thence S. 43°49'51" W., 194.78 feet from said point in sec. 13;

thence S. 33°41'24' W., 180.28 feet;

thence west 250.00 feet;

thence north 150.00 feet;

thence N. 33°10'43" E., 310.64 feet;

thence N. 47°37'48" E., 200.32 feet;

thence N. 35°31'43" E., 287.07 feet;

thence N. 00°00'30" W., 27.99 feet to the north ¼ corner of said sec. 13;

thence westerly three-fourths of a mile more or less to the southwest corner of sec. 31, T. 1 N., R. 2 W., ute meridian;

thence northerly one mile more or less to the northwest corner of the said sec. 31;

thence easterly one and one-fourth miles more or less to the northeast corner of the NW¼NW¼ of sec. 32, T. 1. N., R. 2 W., ute meridian;

thence S. 89°50' E., 2,639.34 feet to the northeast corner of the NW¼NE¼ of said sec. 32;

thence S. 00°01.5' E., 1,288.32 feet to the southwest corner of the NE¼NE¼ of said sec. 32;

thence N. 89°59' E., 1,319.34 feet to the northeast corner of the SE¼NE¼ of said sec. 32;

thence S. 00°07.4' E., 1,283.70 feet to the east ¼ corner of said sec. 32;

thence S. 53°49' E., 2,273.04 feet to a point on the north line of the S½SW¼ of the sec. 33, T. 1 N., R. 2 W., ute meridian;

thence S. 88°14.7' E., 3,457.08 feet to the northeast corner of the SE¼SE¼ of said sec. 33;

thence S. 00°15.5' E., 1,311.42 feet to the southeast corner of said sec. 33;

thence S. 89°13' W., 454.74 feet to a point on the line between sec. 33, T. 1 N., R. 2 W., ute meridian and sec. 17, T. 11 S., R. 101 W., sixth principal meridian;

thence S. 23°04' W., 791.34 feet to a point;

thence S. 38°16' E., 1,238.16 feet to a point on the east line of the SW¼NE¼ of said sec. 17;

thence S. 32°42' E., 888.36 feet to a point 495 feet easterly from the northwest corner of the NE¼SE¼; of said sec. 17;

thence S. 31°49' E., 1,545.72 feet to the southeast corner of said NE¼SE¼;

thence S. 45°03' E., 1,849.98 feet to the southeast corner of the SW¼SW¼ of sec. 16, T. 11 S., R. 101 W., sixth principal meridian;

thence S. 44°49' E., 1,853.94 feet to the southeast corner of the NE¼NW¼ of sec. 21, T. 11 S., R. 101 W., sixth principal meridian;

thence S. 44°57' E., 1,879.68 feet to the southeast corner of the SW¼NE¼ of sec. 21;

thence S. 1°00' E., 672.54 feet to a point on the west line of the NE¼SE¼ of said sec. 21;

thence S. 33°36' E., 2,277.00 feet to the southeast corner of said sec. 21;

thence S. 43°07'39" E., 1,927.28 feet to a point which is 42.50 feet west of the southeast corner of the NW¼NW¼ of sec. 27, T. 11 S., R. 101 W., sixth principal meridian;

thence S. 45°16'42" E., 1,921.24 feet to the center of said sec. 27;

thence S. 89°59.5' E., 1,355.31 feet to the northeast corner of the NW¼SE¼ of said sec. 21;

thence S. 00°22' E., 2,643.96 feet to the southeast corner of SW¼SE¼; of said sec. 27;

thence S. 89°58' E., 1,383.69 feet to the southeast corner of said sec. 27;

thence S. 00°18.7' E., 1,319.44 feet along the west boundary of tract 38, T. 11 S., R. 101 W., sixth principal meridian;

thence S. 00°17.9' E., 1,323.30 feet along the west boundary of tract 37, T. 11 S., R. 101 W., sixth principal meridian, to the southwest corner of said tract 37;

thence N. 89°27.5' E., 1,316.04 feet along the south boundary of said tract 37 to the northwest corner of tract 39, T. 11 S., R. 101 W., sixth principal meridian;

thence S. 00°37.8' E., 2,626.80 feet to the southwest corner of said tract 39;

thence N. 89°53.5' E., 1,391.28 feet along the south boundary of said tract 39 to the northwest corner of tract 74, T. 12 S., R. 101 W., sixth principal meridian;

thence S. 00°0.7' W., 231.00 feet to a point on the township line dividing T. 11 S. and T. 12 S., R. 101 W., sixth principal meridian;

thence continuing S. 00°0.7' W., 790.35 feet to a point on the west boundary of said tract 74;

thence S. 40°21'15" E., 1,188.66 feet to a point within said tract 74;

thence S. 51°16'15" E., 723.29 feet to a point on east line of said tract 74, which is also the north-south line between sec. 2, T. 12 S., R. 101 W., sixth principal meridian, and sec. 30, T. 1 S., R. 1 W., ute meridian;

thence continuing on S. 51°16'15" E., 915.67 feet to a point;

thence N. 74°55'45" E., 250.00 feet to a point;

thence S. 39°50'15" E., 2,245.00 feet to a point;

thence S. 89°50'15" E., 230.00 feet to the northwest corner of the S½S½SE¼ of said sec. 30;

thence easterly one-half mile more or less to the northeast corner of said S½S½SE¼;

thence southerly five-eights of a mile more or less to the east ¼ corner of sec. 31, T. 1 S., R. 1 W., ute meridian;

thence easterly one-fourth mile more or less to the northeast corner of the NW¼SW¼ of sec. 32, T. 1 S., 1 R. 1 W., ute meridian;

thence southerly one-half mile more or less to the southeast corner of the SW¼SW¼ of the said sec. 32, being on the north boundary of sec. 13, T. 12 S., R. 101 W., sixth principal meridian;

thence westerly 760 feet more or less to the northeast corner of said sec. 13, T. 12 S., R. 101 W., sixth principal meridian;

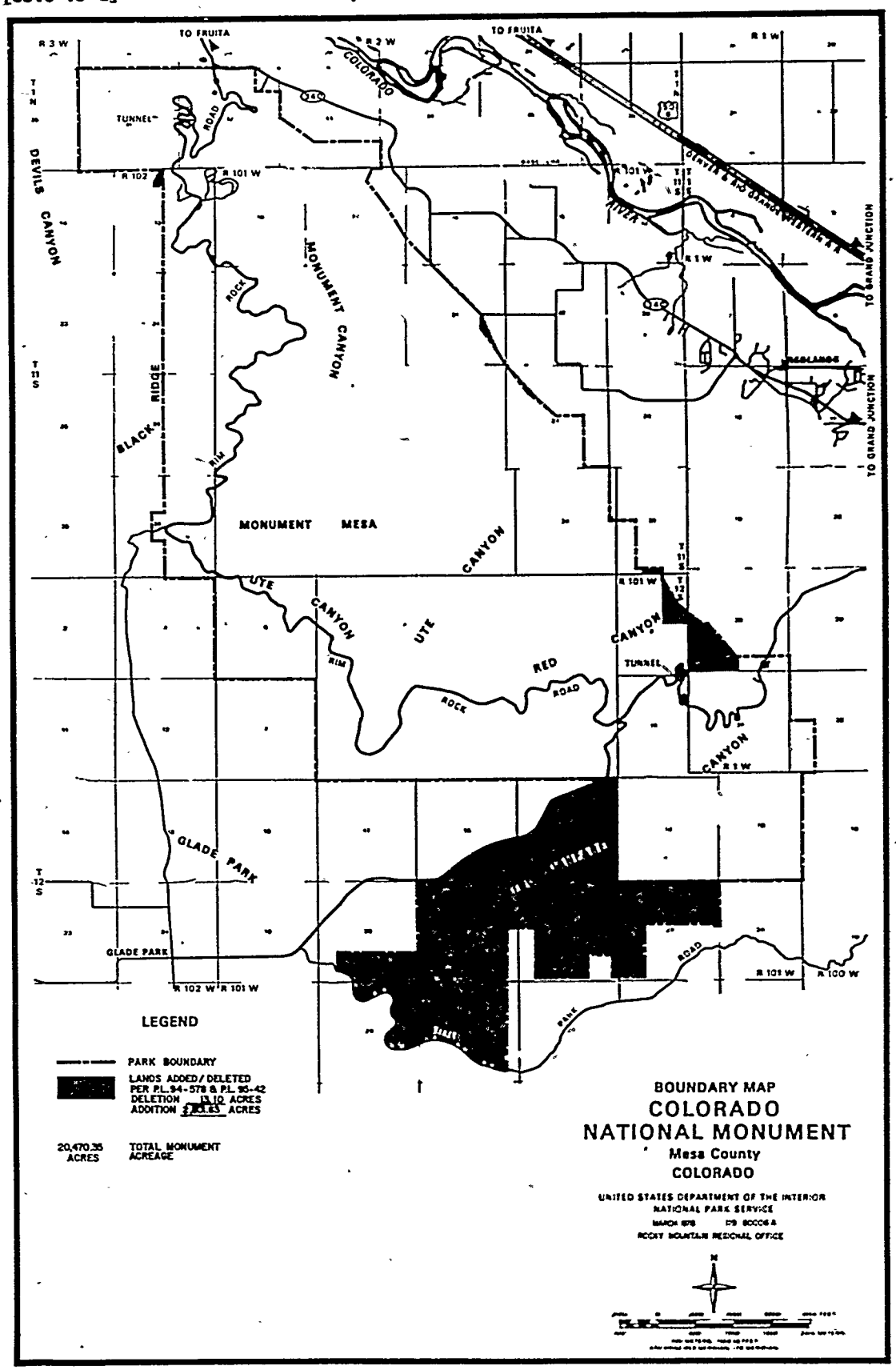
thence southerly one mile more or less to the southeast corner of said sec. 13.

That portion of the boundary for the Colorado National Monument as described in paragraph two (2) above is hereby clarified and corrected and the 7.38 acres of Federally owned lands described in paragraph one (1) above are hereby withdrawn from the Public Land Laws and the Mining and Mineral Leasing Laws and Regulations and included in and made a part of the monument. The administration and jurisdiction of the lands in paragraph one (1) above are now the responsibility of the National Park Service and the lands shall be administered in accordance with the laws and regulations applicable to the monument. This attached boundary map 119-80,006-A, dated March 1978, depicts the addition of the 7.38 acre parcel and all corrections, additions, deletions, clarifications, and revisions to the monument boundary to date.

Dated February 26, 1979.

CECIL D. ANDRUS,
Secretary of the Interior.

[3510-15-C]



[FR Doc. 79-6404 Filed 3-2-79; 8:45 am]

[4310-70-M]

National Park Service

GATEWAY NATIONAL RECREATION AREA ADVISORY COMMISSION

Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Gateway National Recreation Area Advisory Commission will be held commencing at 10:00 a.m., Monday, March 19, 1979, at 26 Federal Plaza, Room 305C New York, New York.

The Commission was established by Public Law 92-592 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Gateway National Recreation Area.

The members of the Commission are: Marian Heiskell, Chairman, New York, N.Y.; Alexander J. D. Greeley, New York, N.Y.; Paul Larson, Lakewood, N.J.; Orin Lehman, Albany, N.Y.; Gordon Litwin, Newark, N.J.; Terrance D. Moore, Newark, N.J.; Sheldon Pollack, New York, N.Y.; Peter M. Rivera, Bronx, N.Y.; Jose A. Sanchez, Jersey City, N.J.; and Nathaniel Washington, Neward, N.J.

The matters to be discussed at this meeting include:

1. Swearing in of Advisory Commission members.
2. Status of Breezy Point Cooperative Agreement.
3. Status of Breezy Point Land acquisition.
4. Status of General Management Plan and Environmental Impact Statement.
5. Report on beach erosion at Sandy Hook Unit.
6. Gateway Natioal Recreation Area FY 1980 budget.
7. Status of Brooklyn bus route extensions to Gateway.
8. Report on Waterbourne Access Study.
9. Review of Gateway National Recreation Area Recreation Management Plan.

The meeting will be open to the public. However, facilities and space to accommodate members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning this matter, or who wish to submit written statements, may contact Herbert S. Cables, Jr., Superintendent, Gateway National Recreation Area, Headquarters, Building 69, Floyd Bennett Field, Brooklyn, New York 11234, Area Code 212-252-9150.

Minutes of the meeting will be available for inspection four weeks after the meeting at the Gateway National Recreation Area Headquarters Building.

Dated: February 26, 1979.

JEAN C. HENDERER,
Chief, Office of Cooperative Activities.

[FR Doc. 79-6405 Filed 3-1-79; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[AA1921-197]

CARBON STEEL PLATE FROM TAIWAN

Investigation and Hearing

Having received advice from the Department of the Treasury on February 12, 1979, that carbon steel plate from Taiwan produced by China Steel Corp. is being, or is likely to be, sold at less than fair value, the United States International Trade Commission, on February 26, 1979, instituted investigation No. AA1921-197 under section 201(a) of the Antidumpting Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. For the purposes of its determination concerning sales at less than fair value, the Treasury Department defined carbon steel plate as hot-rolled carbon steel plate, not coated or plated with metal and not clad, other than black plate, not alloyed, and other than in coils, as provided for in item 608.8415 of the Tariff Schedules of the United States Annotated.

Hearing. A public hearing in connection with the investigation will be held on Tuesday, April 3, 1979, in the Commission's Hearing Room, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436, beginning at 10 a.m., e.s.t. Requests to appear at the public hearing should be filed with the Secretary of the Commission, in writing, not later than noon, Wednesday, March 28, 1979.

A prehearing conference in connection with this investigation will be held in Washington, D.C., at 10 a.m., e.s.t., on Thursday, March 22, 1979, in Room 117, U.S. International Trade Commission Building, 701 E Street NW.

By order of the Commission.

Issued: February 27, 1979.

KENNETH R. MASON,
Secretary.

[FR Doc. 79-6394 Filed 3-1-79; 8:45 am]

[4810-25-M]

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

ADVISORY COMMITTEE ON ACTUARIAL EXAMINATIONS

Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at the Continental Plaza Hotel, North Michigan Avenue at Delaware, Chicago, Ill., on April 2, 1979, beginning at 9:00 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion in the Joint Board's examinations in actuarial mathematics and methodology, referred to in Title 29 U.S. Code, Sections 1242(a)(1)(B) and (C). A determination as required by section 10(d of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that this meeting is for the purpose of considering matters falling within the exemption to public disclosure set forth in Title 5 U.S. Code, Section 552(b)(5), and that the public interest requires such meeting be closed to public participation.

Dated: February 27, 1979.

LESLIE S. SHAPIRO,
Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 79-6321 Filed 3-1-79; 8:45 am]

[4410-18-M]

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

NATIONAL MINORITY ADVISORY COUNCIL ON CRIMINAL JUSTICE

Notice of Meeting

This is to provide notice of meeting of the National Minority Advisory Council on Criminal Justice (NMACCJ).

The National Minority Advisory Council will hold its regular quarterly meeting and work session on March 15 thru 17, 1979. The meeting will be held at the Wilshire Hyatt House, 3515 Wilshire Blvd., Los Angeles, California 90010. The meeting is scheduled to run from 9:00 a.m. until 6:00 p.m. on each day. The three sessions will center on review of the Council's final report on the national needs assessment of minorities and their relationship with the criminal justice system. The meeting is open to the public. Because of inclement weather the meeting scheduled for February 22 thru 25, 1979, was cancelled. It's imperative for us to re-schedule the meeting.

Anyone wishing additional information should contact Lewis Taylor,

Project Monitor, 633 Indiana Ave., N.W., Washington, D.C. 20531. Telephone number (202) 633-2251.

LEWIS W. TAYLOR,
Project Monitor, National Minority Advisory Council on Criminal Justice.

[FR Doc. 79-6304 Filed 3-1-79; 8:45 am]

[4510-30-M]

DEPARTMENT OF LABOR

Employment and Training Administration

EXTENDED BENEFITS

Availability of Extended Benefits in the State of Idaho

This notice announces the beginning of a new Extended Benefit Period in the State of Idaho, effective on February 25, 1979.

BACKGROUND

The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of the Employment Security Amendments of 1970; Public Law 91-373; 26 U.S.C. 3304 note), established the Extended Benefit Program as part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State or the nation, to furnish up to 13 weeks of additional benefits to eligible individuals who have exhausted their rights to regular benefits under permanent State and Federal unemployment compensation laws. Part 615 of Chapter V, Title 20, Code of Federal Regulations, implements the statute (43 FR 13818; March 31, 1978).

In accordance with section 203(e)(1) of the Act the Idaho unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines, in accordance with 20 CFR 615.12(e), that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the State unemployment compensation law equalled or exceeded 5.0 percent. 20 CFR 615.12(c)(2)(i). The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period lasts for a minimum of 13 consecutive weeks.

DETERMINATION OF "ON" INDICATOR

The head of the employment security agency of the State of Idaho has determined that, for the period consisting of the week ending on February 10, 1979, and the immediately preceding 12 weeks, the average rate of insured unemployment (not seasonally adjusted) in the State equalled or exceeded 5.0 percent.

Therefore, an Extended Benefit Period commenced in that State with the week beginning on February 25, 1979.

INFORMATION FOR CLAIMANTS

The duration of Extended Benefits payable in the new Extended Benefit Period, and the terms and conditions on which they are payable are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to Extended Benefits to each individual who has established a benefit year in the State that will not expire prior to the beginning of the Extended Benefit Period, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the Extended Benefit Period. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to Extended Benefits in the State of Idaho, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State Employment Office of the Idaho Department of Employment in their locality.

Signed at Washington, D.C., on February 27, 1979.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

[FR Doc. 79-6361 Filed 3-1-79; 8:45 am]

[4510-30-M]

EXTENDED BENEFITS

Availability of Extended Benefits in the State of Maine

This notice announces the beginning of a new Extended Benefit Period in the State of Maine, effective on February 25, 1979.

BACKGROUND

The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of the Employment Security Amendments of 1970; Public Law 91-373; 26 U.S.C. 3304 note), established the Extended Benefit Program as part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State or the nation, to furnish up to 13 weeks of additional benefits to eligible individuals who have exhausted their rights to regular benefits under permanent State and Federal unemployment compensation laws. Part 615 of Chapter V, Title 20, Code of Federal Regulations, implements the statute (43 FR 13818; March 31, 1978).

In accordance with section 203(e) of the Act the Maine unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines, in accordance with 20 CFR 615.12(e), that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the State unemployment compensation law equalled or exceeded 5.0 percent. 20 CFR 615.12(c)(2)(i). The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period lasts for a minimum of 13 consecutive weeks.

DETERMINATION OF "ON" INDICATOR

The head of the employment security agency of the State of Maine has determined that, for the period consisting of the week ending on February 10, 1979, and the immediately preceding 12 weeks, the average rate of insured unemployment (not seasonally adjusted) in the State equalled or exceeded 5.0 percent.

Therefore, an Extended Benefit Period commenced in that State with the week beginning on February 25, 1979.

INFORMATION FOR CLAIMANTS

The duration of Extended Benefits payable in the new Extended Benefit Period, and the terms and conditions on which they are payable are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to Extended Benefits to each individual who has established a benefit year in the State that will not expire prior to the beginning of the Extended Benefit Period, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the Extended Benefit Period. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to Extended Benefits in the State of Maine or who wish to inquire

about their rights under the Extended Benefit Program, should contact the nearest State Employment Office of the Maine Employment Security Commission in their locality.

Signed at Washington, D.C., on February 27, 1979.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

[FR Doc. 79-6362 Filed 3-1-79; 8:45 am]

[4510-30-M]

MIGRANT AND OTHER SEASONALLY EMPLOYED FARMWORKER PROGRAMS

AGENCY: Employment and Training Administration.

ACTION: Supplemental funding for Programs under Title III, Section 303 of the Comprehensive Employment and Training Act.

SUMMARY: The Secretary of Labor announces the award of supplemental funding for Program Year 1979 under the provisions of the Comprehensive Employment and Training Act (CETA), Title III, Section 303.

EFFECTIVE DATE: February 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Harry Kranz, Acting Director, Office of Farmworker Programs, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213, (202) 376-6128.

GRANT AWARDS

The purpose of this notice is to announce supplemental funding for programs for migrant and other seasonally employed farmworkers for Program Year 1979 under Title III, Section 303, CETA. These programs are administered by the Employment and Training Administration and provide employment and training and other services for migrant and seasonal farmworkers.

The following is a list of grantees for Program Year 1979 and the total amount of supplemental funding. These programs are funded January 1, 1979, to September 30, 1979.

ALABAMA

Alabama Migrant and Seasonal Farmworkers Council, Inc., Montgomery, Alabama	$199,040

ARIZONA

Migrant Opportunity Programs, Phoenix, Arizona	$227,300

ARKANSAS

Arkansas Council for Farmworkers, Inc., Little Rock, Arkansas	$281,700

CALIFORNIA

Campesinos Unidos, Brawley, Calif.	$318,847
CET—San Jose, San Jose, Calif.	$292,478
Central Coast Counties Development Corporation, Aptos, California	$329,244
California Human Development Corporation, Windor, California	$618,777
Proteus Adult Training, Visalia, California	$1,107,635
City of Stockton, Stockton, California	$205,109

COLORADO

Colorado Council on Migrant and Seasonal Agricultural Workers and Families, Wheatridge, Colorado	$183,200

CONNECTICUT

New England Farmworkers' Council, Inc., Springfield, Massachusetts	$107,500

DELAWARE

Migrant and Seasonal Farmworkers, Inc., Raleigh, North Carolina	$18,225

FLORIDA

Florida State Department of Education, Tallahassee, Florida	$1,003,600

GEORGIA

Migrant and Seasonal Farmworkers, Inc., Raleigh, North Carolina	$335,825

HAWAII

Office of the Governor, Honolulu, Hawaii	$72,900

IDAHO

Idaho Migrant Council, Boise, Idaho	$263,200

ILLINOIS

Illinois Migrant Council, Chicago, Illinois	$469,000

INDIANA

Indiana Office of the Governor, Indianapolis, Indiana	$275,650

IOWA

Migrant Action Program, Inc., Des Moines, Iowa	$441,475

KANSAS

ORO Development Corporation, Inc., Oklahoma City, Oklahoma	$282,600

KENTUCKY

Tennessee Opportunity Program for Seasonal Farmworkers, Inc., Nashville, Tennessee	$253,400

LOUISIANA

Motivation, Education and Training, Inc., Jennings, Louisiana	$174,408
Southern Mutual Help Association, Jeanerette, Louisiana	$54,061
Evangeline Parish Community Action Agency, Evangeline County, Louisiana	$28,531

MAINE

Penobscot County Manpower Administration, Bangor, Maine	$138,200

MARYLAND

Migrant and Seasonal Farmworkers, Inc., Raleigh, North Carolina	$64,383

MASSACHUSETTS

New England Farmworkers Council, Inc., Springfield, Massachusetts	$89,000

MICHIGAN

United Migrants for Opportunity, Inc., Grand Ledge, Michigan	$165,603

MINNESOTA

Minnesota Migrant Council, St. Cloud, Minnesota	$210,316

MISSISSIPPI

Mississippi Delta Council for Farmworkers Opportunities	$271,300

MISSOURI

Rural Missouri, Inc., Jefferson City, Missouri	$76,584

MONTANA

State of Montana, Helena, Montana	$164,900

NEBRASKA

Migrant Action Program, Des Moines, Iowa	$251,000

NEVADA

CET—Nevada, San Jose, California	$26,500

NEW JERSEY

Farmworkers Corporation of New Jersey, Vineland, New Jersey	$80,100

NEW MEXICO

Home Education Livelihood Program, Albuquerque, New Mexico	$147,025

NEW YORK

Rural New York Opportunities, Rochester, New York	$348,350

NORTH CAROLINA

Migrant and Seasonal Farmworkers, Raleigh, North Carolina	$873,150

NORTH DAKOTA

North Dakota Migrant Council, Grand Forks, North Dakota	$120,000

OHIO

La Raza de Ohio, Columbus, Ohio	$219,845

OKLAHOMA

ORO Development Corporation, Inc., Oklahoma City, Oklahoma	$120,168

OREGON

California Human Development Corporation, Windsor, California	$270,300

PENNSYLVANIA

Rural New York Opportunities, Rochester, New York	$408,600

PUERTO RICO

Commonwealth of Puerto Rico, Hato Rey, Puerto Rico	$406,025

RHODE ISLAND

New England Farmworkers Council, Inc., Springfield, Massachusetts	$24,125

SOUTH CAROLINA

South Carolina Office of the Governor, Columbia, South Carolina	$162,875

SOUTH DAKOTA

Minnesota Migrant Council, St. Cloud, Minnesota	$98,350

TENNESSEE

Tennessee Opportunity Program for Seasonal Farmworkers, Inc., Nashville, Tennessee	$184,975

TEXAS

Motivation, Education and Training, Inc., Cleveland, Texas	$740,292
Economic Opportunity Development Corporation, San Antonio, Texas	$77,747
Community Action Council of South Texas, Rio Grande City, Texas	$4,639
Colonias del Ville, San Juan, Texas	$240,048

UTAH

Utah Migrant Council, Midvale, Utah	$82,800

VIRGINIA

Migrant and Seasonal Farmworkers, Inc., Raleigh, North Carolina	$296,075

VERMONT

New England Farmworkers Council, Springfield, Massachusetts	$66,200

WASHINGTON	
Northwest Rural Opportunities, Grandview, Washington	$579,600
WEST VIRGINIA	
Governor's Manpower Office, Charleston, West Virginia	$114,050
WISCONSIN	
United Migrant Opportunity Services, Inc., Milwaukee, Wisconsin	$494,375
WYOMING	
Northwestern Community Action Program of Wyoming, Inc., Worland, Wyoming	$68,600

Signed at Washington, D.C., this 16th day of February, 1979.

LAMOND GODWIN,
Administrator,
Office of National Programs.

[FR Doc. 79-6359 Filed 3-1-79 8:45 am]

[4510-30-M]

YOUTH COMMUNITY AND CONSERVATION PROJECTS (YCCIP) AND YOUTH EMPLOYMENT AND TRAINING PROGRAMS (YETP) FOR YOUTHS WHO ARE MEMBERS OF MIGRANT AND OTHER SEASONALLY EMPLOYED FARMWORKER FAMILIES

Condition for Competition

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the conditions for the availability of funds, the implementing schedule for submitting proposals, and the review criteria to be used for Youth Community and Conservation Projects (YCCIP) and Youth Employment and Training Programs (YETP) for youths who are members of migrant and other seasonally employed farmworker families. Funds are to be awarded on a special competitive basis to those grantees qualified under Section 303 of the Act and that are operating Section 303 programs for migrant and seasonal farmworkers and their families under the Comprehensive Employment and Training Act (CETA) for Program Year 1979. A total of $2.1 million is available for farmworker youth for YCCIP projects and $12.1 million is available for YETP programs. Grants will not be less than $150,000; however, the Secretary may allocate more than $1,000,000 to a single grant.

FOR FURTHER INFORMATION CONTACT:

Harry Kranz, Acting Director, Office of Farmworker Programs, U.S. Department of Labor, Room 6308, 601 D Street, N.W., Washington, D.C. 20213.

SUPPLEMENTARY INFORMATION: Pursuant to the Youth Employment and Demonstration Project Act (YEDPA) of 1978, the Office of Farmworker Programs (OFP) of the Department of Labor (DOL) announces the availability of funds to implement Youth Community Conservation Improvement Projects (YCCIP) and Youth Employment and Training Programs (YETP) for youths who are members of migrant and seasonal farmworker families.

The selection procedures and other rules applying to YCCIP and YETP funds for youths who are members of migrant and seasonal farmworker families were published in the FEDERAL REGISTER on Friday, January 13, 1978, Subpart K-Youth Employment and Training Programs for Section 303 grantees, of Part 97 of regulations under CETA.

This publication constitutes formal notice that proposals for YCCIP and YETP funds for programs for youths who are members of migrant and seasonal farmworker families must be hand delivered or posted by registered or certified mail no later than 3 p.m., March 23, 1979.

Each eligible applicant must submit three copies of the proposed plan(s) to the address listed below:

U.S. Department of Labor, Employment and Training Administration, 601 D Street, NW, Room 6308, Patrick Henry Building, Washington, D.C. 20213, Attention: acting Director, Office of Farmworker Programs.

Two copies of the proposed plan(s) shall also be submitted directly to the appropriate Regional Administrator for Employment and Training at the same time the three copies are submitted to the above address and labeled: YCCIP and/or YETP plans for CETA 303 farmworker programs.

Proposed plan(s) sent by mail to the preceding address must be registered or certified with return receipt requested. In order to be considered as submitted on time by the Employment and Training Administration, the following conditions must be met:

1. The proposed plan(s) must be registered or certified by the Postal Service on or before 3 p.m., March 23, 1979. No deviation in this condition shall be made by the Employment and Training Administration. All proposed plan(s) received bearing postmarks after 3 p.m. shall be returned without consideration.

2. Proposed plan(s) delivered by hand must be taken to the address above. All eligible applicants who deliver proposed plan(s) will be given a receipt bearing a time and date of delivery. Proposed plan(s) will be accepted daily between the hours of 8:15 a.m. and 4:45 p.m. Eastern Standard Time. Proposed YETP plans will not be received by hand-delivery after 3 p.m., e.d.t., on March 23, 1979. No deviation in this condition shall be made and no proposed plan delivered after the above stated time shall be accepted.

To reduce delay in implementing this process, grant application materials were sent to all Section 303 grantees with programs for 1978. These grant application materials contained detailed information, instructions, and forms necessary for submitting YCCIP and YETP proposals, exclusive of the rating criteria contained herein.

Those Section 303 grantees which intend to submit YCCIP and/or YETP grant applications, are requested to notify both the Acting Director, Office of Farmworker Programs, at the address previously cited, and the appropriate A-95 Clearinghouse by Standard Form 424 on or before March 12, 1979, so that appropriate arrangements may be made for prompt review of grant application.

Based upon proposals received from 303 grantees, the review process will use the following criteria to recommend those applicants to be awarded grants.

A. *Program development.* Range 0-15 points. The program development factor is a rating of the proposed program's potential impact on the needs of youths and its fulfillment of the intent of the Youth Employment and Demonstration Projects Act (YEDPA). The rating will consider the following elements:

1. *Training.* The proposed program offers training, and/or work opportunities in a number of occupational categories. The effect of these training opportunities in enhancing the employability of youths must be clearly defined. Applicants are also responsible for defining and clarifying "meaningful work experience" if it is an activity in the proposal.

2. *Services.* The proposed program provides necessary supportive services to assist youth to participate in employment and training activities which will enhance their employability.

3. *Program impact.* The proposed program will directly impact on the problems and needs of youth in the particular target area. Applicants must describe how the proposed program will supplement and not substitute for services already being provided by the applicant to youth.

The highest rating of 15 shall be awarded to an organization which has adequately analyzed the economic situation of the target area and identified the social and economic needs of the youth population, and has developed a program based on this analysis and identification, which provides training and supportive services that can be successfully implemented within the existing target area economic and labor market situations to meet these needs.

B. *Delivery system.* Range 0-15 points. The delivery system factor is a rating of the applicant's system for delivering the comprehensive program services and its potential ability to provide effective and timely services to youth. This rating shall include the potential effectiveness of subgrantees in providing services specifically for farmworker youth.

Applicants must describe the relationship of the proposed delivery system to other employment and training delivery systems for youth within the target area.

The highest rating 15 shall be awarded to an organization whose delivery system demonstrates efficient operation and whose subgrantees' (if any) delivery systems are coordinated with the applicant's into a functioning unit.

C. *Administrative capability.* Range 0-15 points. The administrative capability factor is a rating of the applicant's management experience and efficiency. The rating shall include consideration of the managerial expertise of the organization's present and proposed staff in managerial and decision-making positions. This factor shall also consider administrative efficiency based on comparative administrative cost.

The applicant must provide a description of both its management information system (MIS) and self-assessment procedures. Each applicant must clearly demonstrate its ability to provide services, to provide accurate and complete reports on the status of the youth program and conduct self-assessment surveys to identify internal problems in order to take the necessary corrective action to improve the quality of services to youth. The MIS description should identify how compiled program data will be analyzed and utilized by the applicant to improve the program and to provide narrative and statistical program summaries.

Applicants must also describe the procedures followed to identify and select subgrantees which have demonstrated competencies and merit at the local level.

The highest rating of 15 shall be awarded to organizations which can demonstrate the capability to administer efficiently a multiactivity delivery system with comparatively low administrative costs.

D. *Responsiveness to youth.* Range 0-20 points. The responsiveness to youth factor is a rating of the organization's active and visible involvement of youth in its planning and the proposed involvement of youth in implementing its proposed program of services. The rating will also consider the sensitivity of the organization's present and proposed staff in program positions to the needs of youth.

The highest rating of 20 shall be awarded to organizations which clearly demonstrate that youth will be actively involved in the planning, review, and implementation of youth programs.

E. *Linkages and coordination.* Range 0-15 points. The linkage and coordination factor is a rating of an organization's demonstrated and documented programmatic ties with appropriate State and local agencies, private nonprofit organizations, and other groups providing resources and services to youth. The highest rating of 15 shall be awarded to applicants which would operate programs incorporating services at less than, or at no cost to Section 303 from other agencies for the purpose of providing manpower and other services to youth and whose funding request includes letters of commitment for these services.

F. *Experimentation and innovation.* Range 0-20 points. The experimentation and innovation factor is a rating of the organization's capability to adequately describe a concept to be tested by the proposed program design, to utilize appropriate data and rationale as a premise for any hypothesis and to develop procedures and measures for testing the hypothesis. Applicants must clarify the areas in which the proposed program is either experimental or innovative.

The highest rating of 20 shall be awarded to organizations which clearly define the programmatic areas of experimentation and the internal administrative mechanisms to be used to measure any hypothesis regarding the needs of youth.

Signed at Washington, D.C., this 16th day of February 1979.

LAMOND GODWIN,
Administrator, Office of National Programs.

[FR Doc. 79-6360 Filed 3-1-79; 8:45 am]

[4510-29-M]

Pension and Welfare Benefit Programs

[Application No. D-810]

E. H. SHELDON & CO. PENSION TRUST FOR UNION EMPLOYEES AND SHELDON SALARIED EMPLOYEES PENSION TRUST

Proposed Exemption for Certain Transactions

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale by the E. H. Sheldon and Company Pension Trust for Union Employees (the Union Plan) and Sheldon Salaried Employees Pension Trust (the Salaried Plan) (collectively the Plans) of 5,700 shares of American Seating Company (the Employer) common stock to the Employer. The proposed exemption, if granted, would affect participants and beneficiaries of the Plans, the Employer, the trustee of the Plans, and other persons participating in the transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before April 12, 1979.

ADDRESS: All written comments and requests for a hearing (at least six copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-810. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:

C. E. Beaver, Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, Washington, D.C. 20216, 202-523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). This application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the

Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

SUMMARY OF FACTS AND REPRESENTATIONS

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

(1) Approximately six years ago the Union Plan acquired 2,500 shares of the Employer's commons stock and the Salaried Plan acquired 3,200 shares of the Employer's common stock. The 5,700 shares had been acquired by the Plans for investment purposes in the open market.

(2) The Plans were defined benefit plans which were administered by a bank trustee, the Old Kent Bank and Trust Company, Grand Rapids, Michigan (the Trustee). Provisions of the Plans gave the Employer power to dismiss and appoint the Trustee. Similarly, the Trustee had the right to resign at any time.

(3) On April 21, 1977, the Employer announced that it would offer to purchase up to 400,000 shares of its outstanding common stock, par value $5.00 per share, at a net price of $15.00 per share. On April 29, 1977, a formal tender offer was mailed to all shareholders, including the Trustee. At the time of the tender offer and of the subsequent sale, the Employer's common stock was listed on and traded over the New York Exchange in accordance with the Exchange's rules and the provisions of the Securities Exchange Act of 1934, as amended.

(4) The tender offer to purchase its shares was made by the Employer in accordance with the various laws regulating the purchase and sale of securities, including the Securities Exchange Act of 1934, as amended, and the rules thereunder. Also, the offer to purchase was made in accordance with the rules of the New York Stock Exchange.

(5) The tender offer materials sent to shareholders by the Employer stated that the Employer's purchase of its shares pursuant to the tender offer could result in the Employer being delisted by the New York Stock Exchange, resulting in the Employer's stock no longer being traded on the New York Stock Exchange. After expiration of the tender offer, the Employer was notified by the New York Stock Exchange that it could no longer maintain its listed status.

(6) On April 30, 1977, the Plans' 5,700 shares of the Employer's common stock represented less than ½ of 1 percent of the total outstanding shares.

(7) On April 30, 1977, the 2,500 shares of the Employer's stock held by the Union Plan had a market value of $36,875.00 or a per share value of $14.75 which represented approximately 5 percent of the Union Plan's assets.

(8) As of December 31, 1976, the most recent valuation date, the 3,200 shares of the Employer's common stock held for the Salaried Plan had a market value of $31,200.00 or a per share value of $9.75 which represented approximately 3 percent of the Salaried Plan's assets.

(9) On approximately April 30, 1977, the E. H. Sheldon Division of the Employer ceased operations and substantially all of the participants of the Plans were terminated. At this time a determination was made to liquidate the Plans' assets and to purchase annuity contracts to provide required pensions for terminated participants. Notice of the termination of the Plans and of the intention to liquidate the Plans' assets and provide benefits by the purchase of annuity contracts was forwarded to the Pension Benefit Guaranty Corporation. In addition, applications were filed with the Internal Revenue Service's Detroit District Office for advance determinations that the termination of the Plans as being qualified and exempt under the Code.

(10) On or about May 20, 1977, the Trustee tendered the 5,700 shares to the Employer. The shares tendered by the Trustee represented approximately 1½ percent of the total 498,970 shares tendered. The Plans received from the transaction the total sum of $85,500.00 or $15.00 per share net, without the payment of commissions. The price received by the Plans is a higher price than any quoted since 1973, when the market price was a high of $18.625 per share. During the pendency of the tender offer, the quoted price for the Employer's stock on the New York Stock Exchange was never as high as the tender offer price of $15.00 per share. The total proceeds from the transaction of $85,500.00 represented about 5 percent of the fair market value of the combined assets of the Plans as of the most recent valuations dates, April 30, 1977, for the Union Plan and December 31, 1976, for the Salaried Plan.

(11) The Trustee exercised its investment discretion in deciding to tender the 5,700 shares to the Employer.

NOTICE TO INTERESTED PERSONS

Within ten days after the notice of proposed exemption is published in the FEDERAL REGISTER, a copy of the notice and a statement that interested persons have a right to comment within the thirty day period set forth in the notice will be provided to interested parties. The interested parties to whom notice will be provided include all participants in the Plans, including retired participants, terminated participants who have a nonforfeitable interest in the Plans, and beneficiaries of deceased participants. The notice to interested parties will be mailed by first class mail or delivered to them by hand, and will be forwarded to the collective bargaining agent of the participants of the Union Plan. The Employer will provide an affidavit certifying that notice was timely given at the time it is distributed, and copies of the notices to interested parties will be forwarded to the Department at the time notices are distributed to the interested parties.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Agency must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

WRITTEN COMMENTS AND HEARING REQUEST

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

PROPOSED EXEMPTION

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with procedures set forth in ERISA Procedure 75-1. If the exemption is granted, the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale on or about May 20, 1977, by the Plans to the Employer pursuant to the Employer's tender offer of 5,700 shares of the Employer's common stock for $15.00 per share. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction consummated pursuant to the exemption.

Signed at Washington, D.C., this 21st day of February 1979.

IAN D. LANOFF,
Administrator of Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-6089 Filed 3-2-79; 8:45 am]

[4510-29-M]

[Application No. D-694]

CARPENTERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA

Proposed Exemption for Certain Transactions

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt agreements between the Carpenters Pension Trust Fund for Northern California (the Plan) and certain financial institutions, pursuant to which the Plan is obligated to purchase given amounts of mortgage loan originated by the financial institutions, when the loans are secured by residential housing constructed by persons who are contributing employers with respect to the Plan. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the financial institutions involved, contributing employers, and other persons participating in the proposed transactions.

DATES: Written comments must be received by the Department on or before April 12, 1979.

ADDRESS: All written comments (at least six copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C., 20216. Attention: Application No. D-694. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C., 20216.

FOR FURTHER INFORMATION CONTACT:

Stephen Elkins of the Department of Labor (202) 523-8196. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of section 406(a) of the Act and from the and (b) of the Code, by reason of taxes imposed by section 4975(a) section 4975(c)(1)(A) through (D) of the Code. The proposed exemption was requested in an application filed by the trustees of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722. The application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978 (*see* 44 FR 1065, January 3, 1979), section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

SUMMARY OF FACTS AND REPRESENTATIONS

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

The Plan is a multiemployer pension plan which covers carpenters who are employed by home builders in Northern California. In order to obtain construction loans, builders frequently must have a commitment from a mortgage banking firm or other financial institution to provide financing for the purchasers of the dwelling units which the builder proposes to build and sell. Such mortgage banking firms and other financial institutions often do not hold for their own investment all the mortgage loans they make to purchasers of the homes b t instead sell the loans to long term investors, pursuant to a written commitment made by such an investor. In many instances the mortgage banker or financial institution relies on the commitment of the long-term investor in giving its financing commitment to the builder to provide financing for the purchasers of the dwelling units. The Plan has for over 15 years issued written commitments to independent mortgage banking firms, which are typically state and federally chartered banks and savings and loan associations, or other corporations which have a mortgage banking business. Such commitments obligate the Plan to purchase from the mortgage banking firms a specified amount of mortgage loans made by the firm, and secured by first deeds of trust on single family dwelling units. Such units are detached single family homes in subdivisions, are condominiums created under applicable state law, or are planned unit developments which are multi-unit subdivisions restricted by recorded documents limiting the use of property to residential purposes and providing a plan for maintenance of common facilities. Commitments are made on behalf of the Plan by McMorgan & Company, the Plan's investment manager, for the purchase of mortgage loans which conform to certain written guidelines, regarding the type and quality of the property and the credit-worthiness of the buyer, established by the trustees of the Plan. In considering whether to issue a commitment on behalf of the Plan for a particular project, McMorgan & Company considers, among

other things, who the builder of the project will be. McMorgan & Company is, and is required to remain while serving as investment manager for the Plan, registered as an investment advisor under the Investment Advisor's Act of 1940, and was appointed the Plan's investment manager under section 402(c)(3) of the Act.

Following purchase by the Plan of any such mortgage loans, the note and deed of trust is assigned by the mortgage banking firm to the Plan. The Plan normally charges a loan fee for issuing the commitment to purchase such loans, part of which is refundable if the loans are tendered and purchased by the Plan. Terms of the commitments prohibit sale to the Plan of any loan which is an obligation of a party-in-interest or disqualified person with respect to the Plan. In addition, mortgage banking firms from which the Plan purchases mortgages service the loans under separate servicing contracts with the Plan. The servicing includes collecting payments and remitting them to the Plan, sending late notice and handling foreclosures.The Plan's commitment must conform to the written guidelines which the Plan trustees have provided to the Plan's investment manager. The guidelines are in two sets, one for conventional residential mortgages, including planned unit developments and condominium units, and the other for one-family dwellings, FHA-insured or VA-guaranteed mortgages. Each set of guidelines contains requirements regarding the dwelling, the plot, water supply and sewage disposal, the area, the mortgage loan (including the borrower's income and credit) and other requirements or considerations. Some of the requirements are that the dwelling unit not be more than 1 year old (although justifiable exceptions may be considered), that the loan mature in not more than 30 years (in the case of conventional loans) or 35 years (in the case of FHA-insured or VA-guaranteed loans), that conventional loans not exceed 80% of appraised value except loans of 90% of appraised value will be considered where private mortgage insurance covers the top 20%, and that title insurance and other forms of insurance be provided. These requirements are specified in the written commitment. In addition the commitment contains the fee charged by the Plan for issuing the commitment and the interest rate required on the loans which are to be purchased by the Plan.

The terms of the commitment are similar to commitments made by other lenders, for example, insurance companies, banks and savings and loan associations. The interest rate charged is determined by the rate then prevailing in the marketplace.

NOTICE TO INTERESTED PERSONS

Within ten days following publication in the FEDERAL REGISTER notice of the proposed exemption will be mailed to the last address of all participants and beneficiaries under the Plan, all associations which represent employees of covered employers, and all current parties to the collective bargaining agreement creating the Plan.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified persons from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and for their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act, and section 4975(c)(1)(E) and (F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, The Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitonal rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

WRITTEN COMMENTS

All interested persons are invited to submit written comments on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

PROPOSED EXEMPTION

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 and Rev. Proc. 75-26. If the exemption is granted, subject to the conditions set forth below, the restrictions of section 406(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to issuance by the Plan of commitments, in accordance with the guidelines and procedures set forth in the application, obligating the Plan to purchase mortgage loans on single-family dwelling units from financial institutions, when construction of such dwelling units is by persons who are parties in interest or disqualified persons with respect to the Plan, and shall not apply to the purchase of mortgage loans which meet the criteria of the guidelines and procedures set forth in the application, from financial institutions which are parties in interest or disqualified persons with respect to the Plan solely by reason of servicing mortgages which they previously have sold to the Plan. The foregoing exemption will be applicable only if the following conditions are met.

(a) At the time the transaction is entered into, the terms of the transaction are not less favorable to the Plan than the terms generally available in arm's-length transactions between unrelated parties.

(b) The Plan maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be deemed to have occured if, due to circumstances beyond the control of the fiduciaries of the Plan records are lost or destroyed prior to the end of the six-year period, (2) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to

in paragraph (b) of this section are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service

(ii) Any trustee of the Plan or any duly authorized employee or representative of such trustee

(iii) The Plan's investment manager or any duly authorized employee or representative of the investment manager,

(iv) Any participant or beneficiary of the plan or any duly authorized employee or representative of such participant or beneficiary.

In addition, the proposed exemption if granted, will be subject to the express conditons that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 21st day of February, 1979.

IAN D. LANOFF,
Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-6091 Filed 2-27-79; 8:45 am]

[4510-29-M]

[Application No. D-595]

PENN DAIRIES RETIREMENT PLAN

Proposed Exemption for a Transaction

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of shares of preferred stock of Penn Dairies, Inc. by the Penn Dairies Retirement Plan (the Plan) to Penn Dairies, Inc. (Penn Dairies), a party in interest with respect to the Plan.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before April 12, 1979.

ADDRESSES: All written comments and requests for a hearing (at least six copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-595.

The application for exemption and comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles Humphrey, Office of Fiduciary Standards, Pension and Welfare Benefit Programs, U.S. Department of Labor (202) 523-6915. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of section 406(a)(1)(A) and (D) and 406(b)(1) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(I)(A), (D) and (E) of the Code. The proposed exemption was requested in an application filed by the Retirement Plan Committee of the Penn Dairies Retirement Plan pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). This application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

SUMMARY OF FACTS AND REPRESENTATIONS

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. Penn Dairies is a Pennsylvania corporation engaged in the business of producing and distributing dairy products. The Plan is a defined benefit plan with 1050 participants. The Plan's trustee is the Fulton Bank of Lancaster.

2. Penn Dairies has outstanding 10,296 shares of preferred stock, 5,626 shares of which are held by the Plan. The shares held by the Plan represent approximately 54% of the shares outstanding, and they represent approximately 8% of the total assets of the Plan. Of the remainder of the shares of Penn Dairies preferred stock outstanding, approximatley 16% is held by officers and directors of Penn Dairies and their families. The balance is held by other individuals and entities.

3. Virtually all the Penn Dairies preferred stock held by the Plan was purchased in 1964 for $94.00 a share.

4. The stock is entitled to an annual dividend preference of $6.00 a share, and all dividends declared to date have been paid.

5. The stock is entitled to a liquidation preference of $110.00 a share and may be called by Penn Dairies at its option for $110.00 a share. The board of directors of Penn Dairies, however, at a meeting held on October 28, 1976, authorized their legal representative to affirm that they do not anticipate calling the preferred stock within the next 3 years.

6. There is no real market for the stock. Based on the records of the brokerage house that is the principal market maker for the stock, the last trade on the stock occurred on April 12, 1976, at $64.00 a share. The bid price as of September 23, 1976, was $58.00 a share and there is no currently asked price.

7. Penn Dairies proposes to make a tender offer for 5,148, or 50%, of the outstanding shares of Penn Dairies preferred stock. The offer will be made on a pro rata basis to all preferred shareholders. The offering price will be determined by a qualified appraiser based upon an independent appraisal of the stock. All expenses and charges incurred in connection with the tender offer will be borne by Penn Dairies.

8. An appraisal of the preferred stock of Penn Dairies as of November 22, 1976, by Elkins, Stroud, Suplee & Co., a Philadelphia brokerage house and the principal market maker for the stock, indicated that the fair market value of the stock at that time was $75.00 a share.[1]

9. If some shareholders do not tender their shares of Penn Dairies preferred stock, or if some shareholders tender less than 50% of their preferred shares, the shareholders who tender more than 50% of their shares will be permitted to sell more than 50% of their preferred stock to Penn Dairies.

10. The Plan will not accept the tender offer unless a significant percentage of unrelated shareholders of Penn Dairies accept the tender offer. The Plan trustee believes that a sig-

[1] In view of the length of time which has passed since the appraisal was made, the proposed exemption provides that the Plan must receive no less than the fair market value of the preferred stock of Penn Dairies, Inc. tendered, and in any event, not less than the value indicated by an independent appraisal.

nificant number of unrelated shareholders would be 10% or more of all shareholders of Penn Dairies other than shareholders holding 10% or more of the value of Penn Dairies outstanding stock, board members and officers of Penn Dairies and their families. The Plan will determine the significant percentage either on the basis of the number of unrelated shareholders accepting the tender offer or on the basis of the number of shares they hold.

11. The tender offer by Penn Dairies and the sale of the stock by the Plan in response thereto will be completed within six months of the date on which notice is published in the FEDERAL REGISTER of the granting of the requested exemption.

NOTICE TO INTERESTED PARTIES

Within 10 days of the date of publication of this Notice of Pendency, Penn Dairies shall notify all Plan participants and employee organizations described in section 3(4) of the Act of the pendency of the application before the Department. Notice shall be provided to Plan participants who are currently employed by posting for 30 days a notice of pendency of the application and a copy of the notice of pendency of exemption as published in the FEDERAL REGISTER on bulletin boards generally used by Penn Dairies to inform its employees of similar matters. Notice will be provided to Plan participants who are retired and to other interested persons by mailing them a copy of the notice of the pendency of the application and a copy of the notice of pendency of the exemption published in the FEDERAL REGISTER. Notice may also be provided to interested persons by publishing the notices in the employee newspaper, "Pennscripts," which is mailed directly to all currently employed and retired Plan participants. Each notice will also inform interested persons of their right to comment with respect to the pending exemption.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisons of the Act and the Code, including the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the Plan solely in the interests of the participants and beneficiaries of the Plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the Plan must operate for the exclusive benefit of the employees of the employer maintaining the Plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(a)(1)(B), (C), and (E), 406(b)(2) and (3), and 407 of the Act, and section 4975(c)(1)(B), (C) and (F) of the Code;

(3) Before any exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the Plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the Plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

WRITTEN COMMENTS AND HEARING REQUESTS

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

PENDING EXEMPTION

Based upon the representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 so that effective upon the granting of this exemption, the restrictions of section 406(a)(1) (A) and (D) and 406(b)(1) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A), (D) and (E) of the Code shall not apply to the sale of shares of preferred stock of Penn Dairies, Inc. by the Penn Dairies Retirement Plan in response to a tender offer by Penn Dairies, Inc. to purchase 50 percent of its outstanding preferred stock. The exemption shall be subject to the following conditions:

1. The tender offer must be a bona fide offer on a uniform basis to the Penn Dairies Retirement Plan and every person holding the preferred stock of Penn Dairies, Inc. The Penn Dairies Retirement Plan must be able to participate in the tender offer on the same basis and subject to the same terms and conditions as the other preferred stockholders.

2. The Penn Dairies Retirement Plan must receive no less than the fair market value for the shares of preferred stock of Penn Dairies, Inc. tendered, and in any event, not less than the value indicated by an independent appraisal.

The pending exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the applications accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 21st day of February, 1979.

IAN D. LANOFF,
Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-6092 Filed 2-27-79; 8:45 am]

[4510-29-M]

[Application No. D-7291]

PENSION TRUST FUND FOR OPERATING ENGINEERS

Proposed Exemption for Certain Transactions, Extension of Time for Comments and Hearing Requests

In FR Doc. 30351, appearing at page 50255 in the FEDERAL REGISTER of Friday, October 27, 1978, the Department of Labor and the Department of the Treasury published a Notice of Pendency of a proposed exemption from the prohibited transactions restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The Notice of Pendency concerned an application filed by the trustees of the Pension Trust Fund for Operating Engineers, which is maintained for the benefit of members of Local Union No. 3 of the International Union of Operating Engineers.

In a paragraph headed "Notice to Interested Parties" which appears in the Notice (at 43 FR 50256), it was specified that notice of the proposed exemption would be made available to persons who might be affected if the proposed exemption were granted. Among the ways in which such Notice

was to be disseminated was by publicaton in the *Engineering News*, which is the official publication of Local Union No. 3.

The Notice of Pendence appeared in the December 1978 issue of the *Engineering News*, which was mailed to members of Local Union No. 3 on November 30, 1978. In a subparagraph of the Notice (at 43 FR 50255), it was stated that written comments and requests for a public hearing with respect to the proposed exemption should be received by the Department of Labor on or before November 27, 1978. Because the December issue of the *Engineering News*, in which the Notice appeared, was not mailed until after the closing date for comments and hearing requests, a question has arisen as to whether notice of the proposed exemption was sufficient.

Therefore, the time period for receipt of comments on the proposed exemption and requests for a public hearing with respect to it hereby is reopened until April 30, 1979, so that recipients of the *Engineering News* may have the opportunity to comment on the proposed exemption.

All written comments and requests for a public hearing should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C4526, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20216. Attention: Application No. D-729.

For further information contact Stephen Elkins of the Department of Labor, (202) 523-8196. (This is not a toll-free number.)

Signed at Washington, D.C. this 21st day of February, 1979.

IAN D. LANOFF,
Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-6090 Filed 2-27-79; 8:45 am]

[4510-28-M]

Office of the Secretary

[TA-W-4375]

BALDT, INC. CHESTER, PA.

Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4375: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 14, 1978 in response to a worker petition received on November 13, 1978 which was filed by the Industrial Union of Marine and Shipbuilding Workers of America on behalf of workers and former workers producing heavy anchors and anchor chain at the Chester, Pennsylvania plant of Baldt, Inc.

The Notice of Investigation was published in the Federal Register on November 24, 1978 (43 FR 55013). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Baldt, Inc., the U.S. Department of commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of anchors increased both absolutely and relative to domestic production in January-October 1978 as compared to the same period in 1977.

U.S. imports of anchor chain increased relative to domestic production by 677.6 percent in 1977 as compared to 1976. Anchor chain imports declined in January-October 1978 as compared to the same period in 1977; however, the ratio of imports to domestic production in January-October 1978 remained substantially above 1976 levels.

Baldt increased imports of both heavy anchors and anchor chain in every month from December 1977 through September 1978 as compared to the same month in the previous year. Purchases of imports increased in the first 10 months of 1978 compared to the same period in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the heavy anchors and anchor chain produced at the Chester Pennsylvania plant of Baldt, Inc., contributed importantly to the decline in production and to the separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Chester, Pennsylvania plant of Baldt, Inc. who became totally or partially separated from employment on or after November 6, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of February 1979.

C. MICHAEL AHO,
Director, Office of Foreign Economic Research.

[FR Doc. 79-6363 Filed 3-1-79; 8:45 am]

[4510-28-M]

[TA-W-4540]

BERGEN KNITTING MILLS, INC., UNION CITY, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4540: investigation regarding certification of eligibility to apply for workers adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 19, 1978 in response to a worker petition received on December 18, 1978 which was filed on behalf of workers and former workers producing men's, ladies', and children's sweaters at Bergen Knitting Mills, Incorporated, Union City, New Jersey. The investigation revealed that the plant primarily produces ladies' sweaters.

The Notice of Investigation was published in the FEDERAL REGISTER on December 29, 1978 (43 FR 61039). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Bergen Knitting Mills, Incorporated, its manufacturers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and juniors' sweaters increased from 1975 to 1976. In 1977, imports of sweaters increased by 9.0 percent over the average level of imports for the years 1973 through 1976. The ratio of imports of sweaters to domestic production exceeded 140 percent in 1976 and in 1977. The import to domestic production (IP) ratio in 1977 was higher than the average IP ratio for the period 1973 through 1976.

U.S. imports of men's and boys' sweaters, knit cardigans and pullovers increased from 20.4 million units in 1975 to 26.5 million units in 1976 and to 28.3 million units in 1977. Imports increased to 33.2 million units in the first three quarters of 1978 as com-

pared to 22.6 million units in the first three quarters of 1977.

Bergen Knitting Mills, Incorporated is a contractor, producing men's, ladies' and children's sweaters for various manufacturers. A Departmental survey was conducted with the manufacturers from whom Bergen Knitting Mills, Incorporated received contract work. The survey revealed that several of the manufacturers decreased contracts with Bergen and substantially increased their direct imports of finished sweaters in 1978 compared to 1977. A secondary survey conducted with the retail customers of William Two, the direct sales company set up by Bergen's owners, revealed that retailers decreased purchases of sweaters from William Two and increased purchases from foreign sources.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's ladies' and children's sweaters produced at Bergen Knitting Mills, Incorporated, Union City, New Jersey contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Bergen Knitting Mills, Incorporated, Union City, New Jersey who became totally or partially separated from employment on or after August 19, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of February 1979.

C. MICHAEL AHO,
Director, Office of Foreign Economic Research.

[FR Doc. 79-6364 Filed 3-1-79; 8:45 am]

[4510-28-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 16, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 16, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 22nd day of February 1979.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Bata Shoe Co., Inc. (Retail Clerks Union).	Salem, Indiana	2/15/79	2/9/79	TA-W-4,825	Rubber canvas footwear for men, women and children.
Brierwood Shoe Corp. Connors-Hoffmann Div. (workers).	Littleton, N.H	2/12/79	2/5/79	TA-W-4,826	Ladies' shoes and boots.
Brierwood Shoe Corp. Beford Shoe Div., (workers).	Elizabethtown, Pa	2/11/79	2/9/79	TA-W-4,827	Men's and women's casual and dress shoes.
Brierwood Shoe Corp., Beford Shoe Div. (workers).	Lititz, Pa	2/11/79	2/9/79	TA-W-4,828	Men's and women's casual and dress shoes.
C. G. Conn Ltd., Organ Division (workers).	Madison, Ind	2/15/79	2/9/79	TA-W-4,829	Test and assemble transistors, diodes, and capacitors.
Firestone Tire and Rubber Company (workers).	Pottstown, Pa	2/12/79	1/31/79	TA-W-4,830	Tires for new cars.
Lewis Roth & Co. (ACTWU)	Los Angeles, Calif	2/12/79	2/8/79	TA-W-4,831	Men's tailored suits, sportcoats and slacks.
Minatola Industries of Arkansas, D.B.A. Lepanto Garment Company (ILGWU).	Lepanto, Ark	2/12/79	2/6/79	TA-W-4,832	Ladies' dresses and sportswear.
NL Industries, Inc., Doehler Jarvis Casting Division (UAW).	Batavia, N.Y	2/12/79	2/6/79	TA-W-4,833	Magnesium dye castings.
Prospect Cloak Corp. (ILGWU)	Brooklyn, N.Y	2/15/79	2/6/79	TA-W-4,834	Ladies' coats, suits, pants, skirts and vests.
Rosita Shoe Corp. (workers)	Lisbon, N.H	2/12/79	2/5/79	TA-W-4,835	Ladies' leather boots and leisure shoes.
U.S. Handbags, Inc. (Leather Goods, Plastics, Handbags, & Novelty Wkrs. Union).	New York, N.Y	2/12/79	2/8/79	TA-W-4,836	Ladies' handbags.
Volunteer Leather Co. (company)	Milan, Tenn	2/12/79	2/5/79	TA-W-4,837	Final finishing of leather.
Westboro Shoe Co. (workers)	Dexter, Mo	2/9/79	2/6/79	TA-W-4,838	Men's golf and bowling shoes.
Whitehall Leather Co. (company)	Whitehall, Mich	2/16/79	2/5/79	TA-W-4,839	Tanning of raw hides.

[FR Doc. 79-6358 Filed 3-1-79; 8:45 am]

[4510-28-M]

[TA-W-4627 and TA-W-4629]

MINE NO. 7b, ROYAL COAL CO., PRINCE, W. VA. AND MINE NO. 11, ROYAL COAL CO., LAYLAND, W. VA.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, and investigation was initiated on January 8, 1979 in response to a worker petition received on December 18, 1978 which was filed by the United Mine Workers of America, in part on behalf of workers and former workers mining metallurgical coal at the No. 7b Mine and the No. 11 Mine of Royal Coal Company, Prince and Layland, West Virginia.

The Notice of Investigation was published in the FEDERAL REGISTER on January 19, 1979 (44 FR 4029-30). No public hearing was requested and none was held.

During the course of the investigation, it was established that the No. 7b Mine was operated by Pioneer Mining Company during 1976 and 1977 under a contract with Royal Coal Company, which held the lease to the mine property. This contract was terminated in November 1977 and all workers at the mine had been discharged by Pioneer Mining Company as of December 6, 1977.

It was further determined that the No. 11 Mine of Royal Coal Company officially closed on November 3, 1977 and that all workers at this facility were separated from the subject firm as of December 6, 1977. Section 223 (b) of the Trade Act of 1974 states that no certification under this section may apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm occurred more than one year prior to the date of the petition.

The date of the petition in this case is December 13, 1978 and, thus workers terminated prior to December 13, 1977 are not eligible for program benefits under Title II, Chapter 2, Subchapter B of the Trade Act of 1974. The investigation is therefore terminated.

Signed at Washington, D.C. this 22nd day of February, 1979.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-6365 Filed 3-1-79; 8:45 am]

[4510-28-M]

[TA-W-4636, TA-W-4637 and TA-W-4639]

MINE NO. 18, UNITED POCAHANTAS COAL CO., CRUMPLER, W. VA., CRUMPLER PREPARATION PLANT, UNITED POCAHANTAS COAL CO., CRUMPLER, W. VA., AND MINE NO. 10, UNITED POCAHANTAS COAL CO., CRUMPLER, W. VA.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 8, 1979 in response to a worker petition received on December 18, 1978 which was filed by the United Mine Workers of America, in part on behalf of workers and former workers mining and cleaning metallurgical coal at the #10 Mine, the #18 Mine, and the Crumpler Preparation Plant of United Pocahantas Coal Company, Crumpler, West Virginia.

The Notice of Investigation was published in the FEDERAL REGISTER on January 19, 1979 (44 FR 4029-30). No public hearing was requested and none was held.

During the course of the investigation, it was established that all workers at the #10 Mine and the Crumpler Preparation Plant of United Pocahantas Coal Company were separated from employment as of December 1, 1977. It was further established that all workers at the #18 Mine of United Pocahantas Coal Company were separated from employment on December 17, 1976. Section 223(b) of the Trade Act of 1974 states that no certification under this section may apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm occurred more than one year prior to the date of the petition.

The date of the petition in this case is December 13, 1978 and, thus, workers terminated prior to December 13, 1977 are not eligible for program benefits under Title II, Chapter 2, Subchapter B of the Trade Act of 1974. The investigation is therefore terminated.

Signed at Washington, D.C. this 22nd day of February, 1979.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-6366 Filed 3-1-79; 8:45 am]

[4510-28-M]

[TA-W-4287]

SALVATORI CORP., ATLANTA, GA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4287: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 24, 1978 in response to a worker petition received on October 20, 1978 which was filed by the International Leather Goods, Plastics and Novelty Workers' Union on behalf of workers and former workers producing men's belts, wallets and keychains at Salvatori Corporation, Atlanta, Georgia. The investigation revealed that Salvatori Corporation does not produce keychains, but does produce men's belts, wallets and key cases.

The Notice of Investigation was published in the FEDERAL REGISTER on November 3, 1978 (43 FR 51476). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Salvatori Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A Department of Labor survey of customers of Salvatori Corporation revealed that only one customer purchased imported belts and that none of the customers surveyed purchased either imported wallets or key cases in 1976, 1977 or the first ten months of 1978. The one customer that did purchase imported belts maintained constant purchases from Salvatori Corporation in the first ten months of 1978 compared to the same period in 1977.

CONCLUSION

After careful review, I determine that all workers of Salvatori Corporation, Atlanta, Georgia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of February 1979.

C. MICHAEL AHO,
Director, Office of Foreign Economic Research.

[FR Doc. 79-6367 Filed 3-1-79; 8:45 am]

[6820-35-M]

LEGAL SERVICES CORP.

GRANTS AND CONTRACTS

FEBRUARY 26, 1979.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355 88 Stat. 378, U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant applications submitted by:

1. Legal Aid Society of Oneida County, Inc. in Utica, New York to serve Otsego and Delaware Counties.

2. Orleans Legal Aid Bureau, Inc. in Albion, New York to serve Genesee County.

3. Onondaga Neighborhood Legal Services, Inc. in Syracuse, New York to serve Jefferson County.

Interested persons are hereby invited to submit written comments or recommendations concerning the above applications to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, New York Regional Office, 10 East 40th Street, New York, New York 10016.

THOMAS EHRLICH,
President.

[FR Doc. 79-6382 Filed 3-1-79; 8:45 am]

[6820-35-M]

GRANTS AND CONTRACTS

FEBRUARY 26, 1979.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355 88 Stat. 378, U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by: Legal Assistance of North Dakota, Inc. in Bismarck, North Dakota to serve Stutsman, Barnes, LaMoure, Kidder, Dickey, McIntosh, Logan and Griggs Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at:

Legal Services Corporation, Chicago Regional Office, 310 South Michigan Avenue, 24th Floor, Chicago, Illinois 60604.

THOMAS EHRLICH,
President.

[FR Doc. 79-6383 Filed 3-1-79; 8:45 am]

[6820-35-M]

GRANTS AND CONTRACTS

FEBRUARY 26, 1979.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355 88 Stat. 378, U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant applications submitted by:

1. Legal Services Organization of Indiana in Indianapolis, Indiana to serve Vigo, Wayne, Rush, Fayette, Union, Franklin, Randolph, Henry, Morgan, Orange, Perry, Harrison, Hendricks, Boone and Hancock Counties.

2. Legal Services Program of Northern Indiana in South Bend, Indiana to serve Wabash, Howard, Carroll, Fountain, Warren and Benton Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above applications to the Regional Office of the Legal Services Corporation at:

Legal Services Corporation, Chicago Regional Office, 310 South Michigan Avenue, 24th Floor, Chicago, Illinois 60604.

THOMAS EHRLICH,
President.

[FR Doc. 79-6384 Filed 3-1-79; 8:45 am]

[6820-35-M]

GRANTS AND CONTRACTS

FEBRUARY 26, 1979.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant applications submitted by:

1. Central Florida Legal Services in Daytona Beach, Florida to serve Putnam and St. Johns Counties.

2. Greater Orlanda Legal Services in Orlanda, Florida to serve Lake County.

3. Three Rivers Legal Services in Gainesville, Florida to serve Dixie, Gilchrist, Levy, Taylor and Madison Counties.

4. Gulfcoast Legal Services, Inc. in St. Petersburg, Florida to serve Pinellas County.

5. Legal Services of North Florida in Tallahassee, Florida to serve Bay, Jackson, Holmes and Washington Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above applications to the Regional Office of the Legal Services Corporation at:

Legal Services Corporation, Atlanta Regional Office, 615 Peachtree Street, N.E., 9th Floor, Atlanta, GA 30308.

THOMAS EHRLICH,
President.

[FR Doc. 79-6385 Filed 3-1-79; 8:45 am]

[6820-35-M]

GRANTS AND CONTRACTS

FEBRUARY 26, 1979.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355 88 Stat. 378, U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is

considering the grant applications submitted by:

1. Palmetto Legal Services in Columbia, South Carolina to serve Allendale, Bamberg, Barnwell, Calhoun, Orangeburg and Saluda Counties.

2. Legal Services Agency of Western Carolina in Greenville, South Carolina to serve Abbeville, Edgefield, Greenwood, McCormick and Oconee Counties.

3. Piedmont Legal Services in Spartanburg, South Carolina to serve Chester, Lancaster, Laurens and York Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above applications to the Regional Office of the Legal Services Corporation at:

Legal Services Corporation, Atlanta Regional Office, 615 Peachtree Street, N.E., 9th Floor, Atlanta, GA 30308.

THOMAS EHRLICH,
President.

[FR Doc. 79-6386 Filed 3-1-79; 8:45 am]

[6820-35-M]

GRANTS AND CONTRACTS

FEBRUARY 26, 1979.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, U.S.C. 2996-2996f, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant applications submitted by:

1. Southern New Mexico Legal Services in Las Cruces, New Mexico to serve DeBaca, Lea, Lincoln, Otero and Quay Counties.

2. Legal Aid of Western Oklahoma in Oklahoma City, Oklahoma to serve Carter, Cotton, Jefferson, Johnston, Love, Marshall, Murray and Stephens Counties.

3. Legal Services of Eastern Oklahoma in Tulsa, Oklahoma to serve Bryan, Choctaw, Haskell, Latimer, LeFlore, McCurtain, McIntosh, Okfuskee and Pushmataha Counties.

4. Coastal Bend Legal Services in Corpus Christi, Texas to serve Dewitt, Lavaca, Victoria, Jackson and Calhoun Counties.

5. Legal Aid Society of Central Texas in Austin, Texas to serve Coryell, Lampasas, Falls and Milam Counties.

6. West Texas Legal Services in Fort Worth, Texas to serve Young, Shackelford, Stephens, Palo Pinto, Eastland, Erath, Somervell, Hood, Comanche, Brown, Mills and Jack Counties.

7. Texas Rural Legal Aid in Weslaco, Texas to serve Hudspeth, Culberson, Reeves, Jeff Davis, Presidio, Brewster, Pecos, Terrell, Crockett, Schleicher, Menard, Sutton, Kimble, Mason, Gillespie and Kendall Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above applications to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Denver Regional Office, 1726 Champa Street, Suite 500, Denver, CO 80202.

THOMAS EHRLICH,
President.

[FR Doc. 79-6387 Filed 3-1-79; 8:45 am]

[7510-01-M]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (79-21)]

NASA ADVISORY COUNCIL AERONAUTICS ADVISORY COMMITTEE, SUBCOMMITTEE ON AVIATION SAFETY REPORTING SYSTEM (ASRS)

Meeting

The above named Subcommittee will meet March 14-15, 1979, at the NASA Ames Research Center, Moffett Field, CA, in Building 241, Room 237. The meeting will be open to the public on a first-come, first-served basis up to the seating capacity of the room (about 25 persons). All visitors must report to the Ames Research Center receptionist in the Administration Building.

The Subcommittee, which serves in an advisory capacity only, reviews ASRS operations and NASA actions taken in response to subcommittee recommendations. The Subcommittee consists of 11 members, the Chairperson is John J. Winant.

For further information, contact Herman Rediess, (202/755-2243), NASA Headquarters, Washington, D.C. 20546.

AGENDA

MARCH 14, 1979

8:30 a.m.—Chairman's Remarks.
9:00 a.m.—Executive Secretary's Report.
9:30 a.m.—ASRS Management Report.
10:30 a.m.—Subcommittee Evaluation Task Force Reports.
5:00 p.m.—Adjourn.

MARCH 15, 1979

8:30 a.m.—Subcommittee Evaluation Report Final Actions.
12:00 Noon—Adjourn.

ARNOLD W. FRUTKIN,
Associate Administrator for External Relations.

FEBRUARY 26, 1979.

[FR Doc. 79-6209 Filed 3-1-79; 8:45 am]

[7510-01-M]

[Notice (79-22)]

NASA ADVISORY COUNCIL (NAC) AERONAUTICS ADVISORY COMMITTEE

Meeting

The Informal Ad Hoc Advisory Subcommittee on High-Speed Research Activity Review of the NAC Aeronautics Advisory Committee will meet March 14-15, 1979 in Room 625, Federal Building 10B, NASA Headquarters, Washington, DC. The meeting will be open to the public up to the seating capacity of the room (approximately 46 persons including Subcommittee members and participants).

The Subcommittee was established to review NASA research activities in the high-performance (fighter aircraft), supersonic and hypersonic areas to identify the technologies which should or must be advanced (including the needs and reasons) and to establish those programs which should be carried to flight research phases. The Chairperson is Mr. W. T. Hamilton and there are ten members of the Subcommittee.

For further information contact Mr. Jack Levine, Executive Director of the Informal Ad Hoc Subcommittee on High-Speed Research Activity Review, Code RJH, NASA Headquarters, Washington, DC 20546 (202/755-2366).

AGENDA

MARCH 14, 1979

8:30 a.m.—Introductory Remarks.
9:00 a.m.—NASA Research Center Reviews of High-Performance Aircraft Research and Technology Programs and Plans.
10:30 a.m.—NASA Research Center Reviews of Supersonic Cruise Research and Technology Programs and Plans.
1:00 p.m.—NASA Research Center Review of Hypersonic Research and Technology Programs and Plans.
2:30 p.m.—Subcommittee Discussion.

MARCH 15, 1979

8:30 a.m.—Subcommittee Discussion and Formulation of Recommendations.
3:00 p.m.—Adjourn.

ARNOLD W. FRUTKIN,
Associate Administrator for External Relations.

FEBRUARY 26, 1979.

[FR Doc. 79-6210 Filed 3-1-79; 8:45 am]

[7510-01-M]

[Notice (79-23)]

NASA ADVISORY COUNCIL (NAC) AERONAUTICS ADVISORY COMMITTEE

Meeting

The Informal Ad Hoc Advisory Subcommittee on Vertical Take-Off and Landing (VTOL) Technology Requirements of the NAC Aeronautics Advisory Committee will meet March 14-15, 1979, in Room 217, Building 200, NASA Ames Research Center, Moffett Field, California. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including Subcommittee members and participants.)

The Subcommittee was established to assist the NASA in identifying key VTOL technology needs, in assessing the adequacy of NASA and other U.S. programs towards fulfilling the technology deficiencies, and in recommending modifications or enhancements of NASA VTOL program elements to reduce deficiencies. The Chairperson is Mr. Morris A. Zipkin, and there are nine members of the Subcommittee.

For further information, contact Mr. Ralph W. May, Jr., Executive Secretary of the Subcommittee, Code RJL-4, NASA Headquarters, Washington, D.C. 20546 (202/755-2375).

AGENDA

MARCH 14, 1979

8:15 a.m.—Introductory Remarks.
9:00 a.m.—Summary Assessment of Government Agency (non-NASA) VTOL Programs and Plans.
11:00 a.m.—Summary of NASA VTOL R&T, FY 1978. Accomplishments, FY 79-80 Plans.

MARCH 15, 1979

8:15 a.m.—Industry Subcommittee Member Summary Assessment of VTOL Technology Status and Requirements.
1:00 p.m.—Preparation of Subcommittee Preliminary Recommendations on NASA VTOL R&T Program and Assignment of Tasks to be Accomplished and Reviewed at Next Meeting to Provide a Subcommittee Final Report.
5:00 p.m.—Adjourn.

ARNOLD W. FRUTKIN,
Associate Administrator for External Relations.

FEBRUARY 26, 1979.

[FR Doc. 79-6211 Filed 3-1-79; 8:45 am]

[7510-01-M]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (79-24)]

NASA ADVISORY COUNCIL (NAC) SPACE SYSTEMS AND TECHNOLOGY ADVISORY COMMITTEE

Meeting

The Informal Ad Hoc Advisory Subcommitee on Liquid Propulsion Technology Future Requirements will meet March 21-22, 1979, in Room 647, Federal Office Building 10B, NASA Headquarters, 600 Independence Avenue, SW, Washington, DC. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including Subcommittee members and participants).

The Subcommittee was established to advise the NASA on the appropriateness and adequacy of its current and planned program in the area of liquid propulsion technology. The Chairperson is Mr. Gerard W. Elverum, Jr. and there are six members of the Subcommittee.

For further information, contact Mr. Frank W. Stephenson, Jr., Executive Secretary of the Informal Ad Hoc Subcommittee on Liquid Propulsion Technology Future Requirements, Code RTP-3, NASA Headquarters, Washington, DC 20546. (202/755-3147).

AGENDA

MARCH 21, 1979

8:30 a.m.—Introductory Remarks.
9:00 a.m.—Review of NASA Five Year Plan for Space Transportation Systems and Supporting Study Program.
10:30 a.m.—Review of Current NASA Liquid Propulsion Technology Program and Proposed Five Year Plan.
1:30 p.m.—Committee Discussion on NASA Liquid Propulsion Technology Program Appropriateness and Adequacy.

MARCH 22, 1979

8:30 a.m.—Committee Formulation of Recommendations.
12:00 Noon—Adjourn.

ARNOLD W. FRUTKIN,
Associate Administrator for External Relations.

FEBRUARY 26, 1979.

[FR Doc. 79-6212 Filed 3-1-79; 8:45 am]

[4510-23-M]

MINIMUM WAGE STUDY COMMISSION

MEETING

FEBRUARY 26, 1979.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Commission meeting:

NAME: Minimum Wage Study Commission.

DATE: March 13, 1979.

PLACE: Room 550, 2000 K Sreet NW., Washington, D.C. Persons desiring to attend will be admitted to the extent seating is available.

TIME: 10 a.m.

PROPOSED AGENDA

1. Pending business.
2. Finalization of plans on preliminary studies dealing with:
   (a) youth.
   (b) inflation.
   (c) agriculture.

Next meeting of the Commission will be Tuesday, April 10, 1979.

All communications regarding this Commission should be addressed to: Mr. Louis E. McConnell, Executive Director, 1430 K Street NW., Suite 500, Washington, D.C. 20005, (202) 376-2450.

LOUIS E. MCCONNELL,
Executive Director.

[FR Doc. 79-6219 Filed 3-1-79; 8:45 am]

[6820-98-M]

NATIONAL COMMISSION ON AIR QUALITY

MEETING

The National Commission on Air Quality hereby gives notice that its meeting originally scheduled for March 5 has been postponed until March 19. Public testimony on the development of the Commission's plan of study will be taken during the early afternoon of its March 19 meeting. The meeting will be conducted in the Judicial Executive Room of the Quality Inn Capitol Hill located at 415 New Jersey Avenue, N.W., Washington, D.C.

The meeting will provide an opportunity for a number of persons who requested to testify at the Commission's January 8 or February 12 public hearings, but were unable to do so because of scheduling difficulties, to present oral testimony. Testimony should focus on research needs, techniques and priorities related to the following issues:

—Effects of air pollution on health and health care costs;

—Impact of air pollution and air pollution controls on regional economic development;

—Costs of compliance with the requirements of the Clean Air Act as interpreted by the Environmental Protection Agency;

—Effectiveness of present statutory requirements and success of current

regulatory efforts in accomplishing the general purposes set forth in the Clean Air Act;

—Appropriate automobile emission standards and best available technologies needed to meet them;

—Most appropriate and practical means of preserving air quality in areas in which the air is now cleaner than the national ambient air quality standards;

—Most appropriate and practical means of enhancing air quality in those areas in which established air quality standards are not met;

—Special problems of small business and governmental agencies in obtaining reductions of emissions from existing sources to offset increased emissions from new sources;

—Alternatives to regulation as a means of reducing pollution;

—Inherent problems in efforts to diminish pollution in high altitude areas; and

—Relationship of established environmental regulations to national energy policies.

Those wishing to testify should notify Paul Freeman at (202) 634-7138 by March 7 in order to schedule a time for submission of prepared oral testimony and should send at least 50 copies of such testimony no later than March 14 to the attention of Paul Freeman at the office of the National Commission on Air Quality, 1730 K Street, N.W., Suite 207, Washington, D.C. 20006.

NATIONAL COMMISSION ON AIR QUALITY,
WILLIAM H. LEWIS, Jr.,
Director.

FEBRUARY 28, 1979.

[FR Doc. 79-6596 Filed 3-1-79; 11:31 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON EMERGENCY CORE COOLING SYSTEMS (ECCS)

Meeting

The ACRS Subcommittee on Emergency Core Cooling Systems will hold a meeting on March 19-20, 1979 at the Travelodge International Hotel, 9750 Airport Blvd., Los Angeles, CA 90045. Notice of this meeting was published February 23, 1979.

In accordance with the procedures outlined in the FEDERAL REGISTER on October 4, 1978 (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

MONDAY, MARCH 19, AND TUESDAY, MARCH 20, 1979

8:30 A.M. UNTIL THE CONCLUSION OF BUSINESS EACH DAY

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, and their consultants, regarding the following topics:

(1) Code Work on Transient Two-Phase Flow

(2) Status of Physical Inputs to Codes

(3) Analysis of LOFT L2-2 Test

(4) Status of ECCS Related Research Programs

(5) Standard Problem Program

(6) ODYN Code Review

(7) Status of Analysis of Assymetric Blowdown Forces

(8) Status of Current Licensing Actions

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with Subsection 10(d) of Pub. L. 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b (c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Andrew L. Bates (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: February 26, 1979.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 79-6374 Filed 3-1-79; 8:45 am]

[7590-01-M]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS NUCLEAR REGULATORY COMMISSION

Revised Notice of Meeting

Regarding the previous FEDERAL REGISTER Notice (published on February 21, 1979, Volume 44, P. 10557) for the meeting of the Advisory Committee on Reactor Safeguards to be held on March 8-10, 1979, in Washington, D.C., a change for the items being discussed on Friday, March 9, 1979 has been made as follows.

FRIDAY, MARCH 9, 1979

8:30 a.m.-10:00 a.m.: Executive Session (Open)—The Committee will discuss the role and responsibilities of the ACRS in the NRC regulatory process.

10:00 a.m.-1:15 p.m. and 2:15 p.m.-3:00 p.m.: Meeting with NRC Staff (Open)—The Committee will meet with members of the NRC Staff to hear reports on and to discuss recent operating experience and licensing actions including proposed changes in the Technical Specifications for the Dresden Nuclear Power Station Unit 2. The Committee will also hear and discuss reports regarding generic matters related to the regulatory process including the criteria and procedures for imposition of Civil Penalties (10 CFR Part 2.205), the Nonproliferation Alternative Systems Assessment Program and the shipment of spent reactor fuel elements through densely populated areas.

The future schedule for ACRS activities will also be discussed.

3:00 p.m.-3:30 p.m.: Executive Session (Open)—The Committee will hear and discuss the report of its Subcommittee and Consultants who may be present regarding the request for an Operating License for the William H. Zimmer Nuclear Generating Station Unit 1.

Portions of this session will be closed as required to discuss Proprietary Information related to this facility and arrangements for the physical security of this station.

3:30 p.m.-7:00 p.m.: William H. Zimmer Nuclear Generating Station Unit 1 (Open)—The Committee will hear reports from and hold discussions with representatives of the NRC Staff and the Applicant regarding proposed operation of this unit.

Portions of this session will be closed as required to discuss Proprietary Information related to this facility and arrangements for the physical protection of this station.

Dated: February 26, 1979.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 79-6375 Filed 3-1-79; 8:45 am]

[7590-01-M]

[Byproduct Material License No. 45-02808-04]

ATLANTIC RESEARCH CORP.

Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of February 22, 1979, oral argument on the appeal of Atlantic Research Corporation, Alexandria, Virginia, from the decisions of the Administrative Law Judge in this civil penalty proceeding will be heard at 10 a.m. on Thursday, March 22, 1979, in the Commission's Hearing Room, 5th floor, 4350 East-West Highway, Bethesda, Maryland.

Dated: February 26, 1979.

For the Appeal Board.

MARGARET E. DU FLO,
Secretary to the Appeal Board.

[FR Doc. 79-6378 Filed 3-1-79; 8:45 am]

[7590-01-M]

DRAFT REGULATORY GUIDES AND NUREG REPORTS

Issuance and Availability

The Nuclear Regulatory Commission has prepared draft Regulatory Guides and NUREG Reports to aid licensees in implementing proposed amendments to 10 CFR Part 73 (§ 73.20, 73.25, 73.26, 73.45, 73.46), which were published in the FEDERAL REGISTER August 9, 1978. These documents have been assembled into 3 volumes:

"Fixed Site Physical Protection Upgrade Rule—Guidance Compendium, Volume I"
"Fixed Site Physical Protection Upgrade Rule—Guidance Compendium, Volume II"
"Standard Format and Content Guide for Physical Protection of Strategic Special Nuclear Material In Transit"

These draft volumes are being made available to concerned parties so that they may review the materials and provide comments and suggestions early in the development of this guidance. The NRC anticipates that these documents will be revised in response to the comments, and will be made final concurrently with the effective date of the aforementioned amendments to 10 CFR Part 73, in mid-1979.

A seminar is scheduled for March 27-28, 1979 in Richmond, Virginia, to orient potential users in the application and content of these documents. Present licensees will be contacted regarding seminar arrangements. Other interested parties should contact Mr. L. J. Evans, Jr., Chief, Requirements Analysis Branch, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone number (301) 427-4043 by March 9, 1979.

Copies of these documents will be available for public inspection at the NRC's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555.

Dated at Silver Spring, Md. this 14th day of February 1979.

For the Nuclear Regulatory Commission.

WILLIAM J. DIRCKS,
Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 79-6373 Filed 3-1-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-498A, 50-499A, 50-445A, 50-446A]

HOUSTON LIGHTING & POWER CO., ET AL, (SOUTH TEXAS PROJECT, UNITS 1 AND 2), TEXAS UTILITIES GENERATING CO., ET AL, (COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2)

Prehearing Conference and Arguments on Motion To Quash Subpoenas

FEBRUARY 23, 1979.

Pursuant to Board's Order dated December 5, 1978, a prehearing conference will be held at 10:00 a.m., local time, on March 20, 1979 in the Nuclear Regulatory Commission's Hearing Room, 4350 East-West Highway, 5th Floor, Bethesda, Maryland to consider and review progress made by the parties in completing discovery and preparing for an early commencement of the evidentiary hearing.

Commencing at 9:00 a.m. on March 29, 1979 at the same location mentioned above, the Board will hear arguments on the Joint Motion to Quash Subpoenas, filed by counsel for Air Products and Chemicals, Inc.; E. I. DuPont de Nemours & Co.; Monsanto Company; PPG Industries, Inc.; and Union Carbide Corporation dated February 16, 1979.

Dated at Bethesda, Md., this 23rd day of February 1979.

It is so ordered.

For the Atomic Safety and Licensing Board.

MARSHALL E. MILLER,
Chairman.

[FR Doc. 79-6376 Filed 3-1-79; 8:45 am]

[7590-01-M]

PUBLIC SERVICE ELECTRIC & GAS CO. (SALEM NUCLEAR GENERATING STATION, UNIT 1)

[Docket No. 50-272]

Order Rescheduling Prehearing Conference; Proposed Issuance of Amendment to Facility Operating License No. DPR-70

Notice is hereby given that, pursuant to 10 CFR 2.752, the prehearing conference in the above-referenced matter which was originally scheduled for February 22, 1979, shall be held at 1:30 p.m. on Thursday, March 15, 1979, in the Main Courtroom (1st Floor), Old Salem Courthouse, Broadway and Market Streets, Salem, New Jersey.

The parties are directed to be prepared to discuss the items listed in 10 CFR 2.752. The Licensee shall also be asked to arrange a visit to the facility by the Board.

Dated at Madison, Wisconsin, this 26th day of February 1979.

It is so ordered.

For the Atomic Safety and Licensing Board.

GARY L. MILHOLLIN,
Chairman.

[FR Doc. 79-6377 Filed 3-1-79; 8:45 am]

[7590-01-M]

[Docket No. 50-272]

PUBLIC SERVICE ELECTRIC & GAS CO. (SALEM NUCLEAR GENERATING STATION, UNIT 1)

Order Rescheduling Special Prehearing Conference for Limited Appearances; Proposed Issuance of Amendment to Facility Operating License No. DPR-70

By its Order of December 15, 1978, this Board granted a motion to hold a special prehearing conference for the purpose of receiving statements from persons who wish to make limited appearances under 10 CFR 2.715. The conference, scheduled for February 22, 1979, was cancelled because of bad weather.

Notice is hereby given that, pursuant to 10 CFR 2.751a and 10 CFR 2.715, the special prehearing conference will be held at 9:30 a.m. on Friday, March 16, 1979, in the Main Courtroom (1st Floor), Old Salem Courthouse, Broadway and Market Streets, Salem, New Jersey. The Board will also meet at this same location at 7:00 p.m. on Thursday, March 15, 1979, to accept appearances by persons who are unable to appear during normal working hours.

All persons desiring to make limited appearances in this proceeding shall attend this special prehearing conference. If the Chairman so determines, persons desiring to make their state-

ments orally shall be subject to a reasonable limit of time.

Dated at Madison, Wisconsin, this 26th day of February 1979.

It is so ordered.

For the Atomic Safety and Licensing Board.

GARY L. MILHOLLIN,
Chairman.

[FR Doc. 79-6379 Filed 3-1-79; 8:45 am]

[6325-01-M]

OFFICE OF PERSONNEL MANAGEMENT

Annual Comprehensive Review of Advisory Committees

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of section 7(b) of the Federal Advisory Committee Act (Pub. L. 92-463), the Office of Personnel Management is conducting a comprehensive review of the following advisory committees: (1) The Committee on Private Voluntary Agency Eligibility, (2) the Federal Prevailing Rate Advisory Committee, and (3) the President's Commission on White House Fellowships.

The review will determine for each committee whether:

1. The committee is carrying out its purpose;
2. Consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;
3. It should be merged with other advisory committees; or
4. It should be abolished.

DATES: Interested persons are invited to submit comments by March 23, 1979, on the items covered in the comprehensive review as outlined above.

ADDRESS: Address any comments to Advisory Committee Management Officer, Office of Personnel Management, Room 5554, 1900 E Street, N.W., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT:

William C. Duffy 202-632-4596.

SUPPLEMENTARY INFORMATION: Following is a brief description of the purpose and operations of each advisory committee.

COMMITTEE ON PRIVATE VOLUNTARY AGENCY ELIGIBILITY

This committee reviews applications and supplementary financial and accounting data from national voluntary agencies and makes recommendations to the Director, Office of Personnel Management, on which agencies should be authorized to solicit on the job in Federal installations. It also makes recommedations regarding certain other matters relating to fund raising appeals when requested.

During 1978, the committee held one meeting. The meeting was open to the public. The committee consists of representatives from three Federal employee unions and the management of two Federal agencies.

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

This committee was established by Public Law 92-392. It studies the prevailing rate wage system in the Federal government and advises the Director, Office of Personnel Management, on matters such as policy for determining pay rates, including the planning of surveys and the gathering and analysis of data. Committee membership is provided for by law and includes management members from Federal departments and agencies and representatives of employee organizations.

During 1978 the committee held 21 meetings, all open to the public. It submitted four reports, as follows: (1) Method to be Used to Establish Special Rates or Rate Ranges for Supervisory Positions when Special Wage Rates or Rate Ranges are Established for Nonsupervisory Positions; (2) Special Rates of Pay for Electrical Lineman Postions at Fort Devens and Lawrence G. Hanscom AFB, Maine; (3) Discontinuance of Special Project Planning Wage Schedules for Employees Engaged in Core Drilling Operations; and (4) Committee Recommendation Regarding the 5.5 Percent Limitation on FWS Wage Adjustments.

PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

This Commission provides gifted and highly motivated Americans early in their chosen careers with firsthand experience in the process of governing the nation and a sense of personal involvement in the leadership of the society.

During 1978 the Commission held twelve closed meetings and one open meeting. Those portions of Commission meetings which determine policy are open to the public; those dealing with confidential character references are closed.

The Commission received and processed applications from 2026 persons applying for the 1978-1979 program. It recommended to the President fifteen men and women for selection as White House Fellows, and the President accepted the recommendation and appointed them on May 22, 1978. As part of its mandate, the Commission sets policies for the educational program of the Fellows including meetings with leaders in government, education, and industry. There is no set number of members on the Commission. It includes men and women from government, industry, various professions, and academic endeavors.

DONALD J. BIGLIN,
Advisory Committee Management Officer.

[FR Doc. 79-6305 Filed 3-1-79; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 10598; 812-4422]

MASSACHUSETTS MUTUAL LIFE INSURANCE CO. AND MASSMUTUAL CORPORATE INVESTORS, INC.

Filing of Application for Order

FEBRUARY 22, 1979.

Notice is hereby given that Massachusetts Mutual Life Insurance Company ("Insurance Company"), a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts, and MassMutual Corporate Investors, Inc. ("Fund"), 1295 State Street, Springfield, Massachusetts 01111, registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified, management investment company (hereinafter, the Insurance Company and the Fund are referred to collectively as "Applicants"), filed an application on January 15, 1979, and an amendment thereto on January 19, 1979, for an order of the Commission, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting the Insurance Company to approve the proposed merger of Sonderling Broadcasting Corporation ("Sonderling") into Viacom International Inc. ("Viacom"), which merger would, *inter alia*, involve the assumption by Viacom of $5,000,000 in principal amount of Sonderling 9% Senior Notes due 1990 ("Sonderling Notes"), currently held by the Insurance Company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that pursuant to an order of the Commission issued on August 19, 1971 (Investment Company Act Release No. 6690) (the "Order"), the Insurance Company, which acts as investment adviser to the Fund, is permitted to invest concurrently for its general account in each issue of securities purchased by the Fund at direct placement, and to exercise warrants, conversion privileges and other rights with respect to such securities at the same time as the Fund. The Order contains several con-

ditions, including one condition which provides that neither the Insurance Company nor the Fund, unless otherwise permitted by order of the Commission, may acquire any further interest in an issuer or in any affiliated person of such issuer, or in securities issued by such issuer or any affiliated person of such issuer, other than interests in all respects identical.

The application states that the Insurance Company and the Fund each hold $1,312,500 principal amount of Viacom 8½% Senior Notes due 1992, and $5,500,000 in principal amount of Viacom 6% Convertible Subordinated Notes due 1992 ("Convertible Viacom Notes"), which are convertible into shares of Viacom common stock at $25 per share (these two types of notes are collectively referred to as "Jointly-Held Viacom Notes"). In addition, Applicants state that the Insurance Company holds $8,000,000 in principal amount of Viacom 8.90% Senior Notes due 1997, and that the purchase of such notes was permitted by an order of the Commission pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder (Investment Company Act Release No. 10044, December 7, 1977). Applicants state that neither the Insurance Company or any affiliated person of the Insurance Company, nor the Fund or any affiliated person of the Fund, own any securities of Viacom or Sonderling other than those described above.

According to the application, the business of Viacom includes: distribution of television programs and feature films for television exhibition; cable television operations; pay television programming; and operation of a television station serving the Connecticut area. The application also states that Sonderling: (1) Operates radio and television stations in the upstate New York, New York City, Washington, D.C., Houston-Pasadena, Memphis, Oakland and Oak Park-Chicago areas, and (2) operates motion picture theaters in the Chicago area. Applicants state that Sonderling proposes to transfer ("Split-Off") to two wholly-owned subsidiaries its motion picture operations and the radio stations serving the Oak Park-Chicago area and that, prior to the proposed merger, Sonderling's shares of these subsidiaries will be transferred to Egmont Sonderling and Roy Sonderling in exchange for the Sonderling shares they now own. Following the Split-Off, Sonderling proposes to merge the remainder of its operations into Viacom. According to the application, Viacom will be the surviving corporation of the proposed merger, and under the terms of the merger will assume the Sonderling Notes. According to the application, under the terms of the Sonderling Notes, the proposed merger requires the approval of the Insurance Company. The application states that the approval of the merger by the Fund is not required by the terms of the Jointly-Held Viacom Notes.

Applicants state that the approval by the Insurance Company of the proposed merger, and the assumption of the Sonderling Notes by Viacom concomitant with the proposed merger, would result in an acquisition by the Insurance Company of a further interest in Viacom, which would, unless permitted by order of the Commission, violate the condition of the Order which prohibits the Insurance Company and the Fund from acquiring any further interests in securities of a jointly-held issuer, other than interests identical in all respects. Applicants assert that, although the Sonderling Notes to be assumed by Viacom are not an appropriate investment for the Fund, unless the requested relief is granted, the Insurance Company will be unable to consent to the proposed merger of Sonderling into Viacom.

Section 17(d) of the Act and Rule 17d-1 thereunder, taken together, provide, in part, that it is unlawful for an affiliated person of a registered investment company, acting as principal, to effect any transaction in which such investment company is a joint participant, without the permission of the Commission. Rule 17d-1 provides, in part, that in passing upon applications for orders granting such permission, the Commission will consider (1) whether the participation of the investment company in such transaction on the basis proposed is consistent with the provisions, policies, and purposes of the Act, and (2) the extent to which such participation is on a basis different from or less advantageous than that of other participants.

Applicants submit that the policies of the Fund specify that the principal investments of the Fund will be long-term obligations and, occasionally, preferred stocks, purchased directly from issuers, which obligations or preferred stocks have equity features such as accompanying shares of common stock, rights to acquire common stock, or rights to convert into common stock. According to the application, the Sonderling Notes have never had, and upon assumption by Viacom will not have, any accompanying equity features, and would not be within the investment policies of the Fund. The application further states that the assumption of the Sonderling Notes does not involve a new investment by the Insurance Company, and that the Fund does not hold any Sonderling Notes which could be assumed by Viacom pursuant to the proposed merger agreement. According to the application, in the judgment of the Insurance Company, the Sonderling Notes to be assumed by Viacom continue to be an attractive investment, and it would like to consent to the proposed merger and the concomitant assumption of the Sonderling Notes by Viacom. In addition, the application states that at a meeting held on January 18, 1979, the Fund's Board of Directors adopted a resolution consenting to the assumption of the Sonderling Notes by Viacom.

Applicants state that the Covertible Viacom Notes held by the Fund and the Insurance Company will be subordinate to the Sonderling Notes to be assumed by Viacom. The application states, however, that, in the opinion of the Insurance Company, if it does not consent to the proposed merger and the concomitant assumption of the Sonderling Notes by Viacom, Viacom would cause the prepayment of the Sonderling Notes, and issue new senior debt in an amount similar to the amount of the Sonderling Notes retired. Applicants state that such new senior debt would be senior to the Convertible Viacom Notes, and that, due to changes in interest rates, such new senior debt could be on terms less favorable to Viacom than the Sonderling Notes.

Applicants state that when the Jointly-Held Viacom Notes were purchased in 1972, the Insurance Company did not anticipate the proposed merger and the resulting assumption of the Sonderling Notes by Viacom, and that the purchase of the Jointly-Held Viacom Notes, the proposed merger and the assumption of the Sonderling Notes by Viacom, are independent transactions, except to the extent that the Insurance Company established relationships with Viacom when it purchased the Jointly-Held Notes, and with Sonderling in 1968, when it purchased the Sonderling Notes.

Applicants submit that the continuing investment by the Insurance Company in the Sonderling Notes to be assumed by Viacom would not be less advantageous to the Fund than to the Insurance Company and would be consistent with the provisions, policies and purposes of the Act. According to the application, the Sonderling Notes to be assumed by Viacom would be contrary to the Fund's stated investment policy, and the Insurance Company states that it would be disadvantaged if it is not permitted to consent to the merger and the resulting asumption by Viacom of the Sonderling Notes. Applicants state that the purpose of the application is to avoid the disadvantage to the Insurance Company which might occur if the requested relief is not granted.

Applicants state that: (1) They are not at this time seeking an order respecting any subsequent sale or conversion of the Jointly-Held Viacom Notes by the Insurance Company or the Fund; (2) under the terms of the Order, if either the Insurance Company or the Fund is to exercise its conversion rights with respect to the Convertible Viacom Notes, both must exercise such rights at the same time and in the same amount; and (3) under the terms of the Order, if the Jointly-Held Viacom Notes are to be sold or disposed of, such sale or disposition must be made by the Fund and the Insurance Company at the same time, in the same amount and at the same unit consideration. The application states that the Order prevents conversion of the Convertible Viacom Notes into Viacom common shares at a time when the Insurance Company holds securities of Viacom not in all respects identical to the securities of Viacom held by the Fund.

Notice is further given that any interested person may, not later than March 15, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-6234 Filed 3-1-79; 8:45 am]

[8010-01-M]

[Release No. 20932; 70-6259]

MIDDLE SOUTH ENERGY, INC.

Proposal To Privately Place First Mortgage Bonds With a Group of Institutional Investors

FEBRUARY 23, 1979.

Notice is hereby given that Middle South Energy, Inc. ("MSE"), 225 Baronne Street, New Orleans, Louisiana 70112, a wholly owned subsidiary of Middle South Utilities, Inc. ("MSU"), a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below for a complete statement of the proposed transaction.

MSE was incorporated on February 11, 1974 under the laws of the State of Arkansas to own and finance certain future generating capacity of the Middle South System. In addition to owning all the common stock of MSE, MSU owns all of the outstanding common stock of Arkansas Power & Light Company, Arkansas-Missouri Power Company, Louisiana Power & Lights Company, Mississippi Power & Light Company ("MP&L") and New Orleans Public Service Inc. (collectively, the "System Companies"). The System Companies generate, transmit and distribute electric energy and power in the States of Arkansas, Louisiana, Mississippi and Missouri.

MSE's only activity to date has been the acquisition, financing and construction of the Grand Gulf Nuclear Electric Station ("Grand Gulf Plant"), a two-unit, nuclear-fueled electric generating station being constructed on the east bank of the Mississippi River near Natchez, Mississippi. Each unit is to have a net capability of 1,250MW; the first unit is scheduled to be completed in 1981 and the second in 1984. It is estimated that the total construction costs of the Grand Gulf Plant, excluding nuclear fuel, will be $2,282.6 million, of which approximately $1,036 million have been expended through December 31, 1978.

MSE is negotiating for the sale of up a to 10% undivided ownership interest in the Grand Gulf Plant to South Mississippi Electric Power Association. If consummated, such sale would result in a *pro rata* reduction in MSE's share of construction costs for the Grand Gulf Plant.

In June, 1974, pursuant to a Commission order dated June 4, 1974 (HCAR No. 18437): (1) MSE entered into a Capital Funds Agreement with MSU, a Sales Agreement and a Service Agreement with MP&L, an Availability Agreement with the System Companies and a Bank Loan Agreement with Manufacturers Hanover Trust Company, as agent, and fourteen commercial banks and; (2) MSE issued and sold to MSU pursuant to the terms of the Capital Funds Agreement 40,000 shares of its common stock, no par value for $40 million. Under the Sales Agreement MSE applied approximately $30,000,000 of the proceeds of such sale to the acquisition from MP&L of all of its interest in the Grand Gulf Plant as constructed to the date of sale.

Under the Capital Funds Agreement, MSU agreed to supply or cause to be supplied to MSE sufficient capital (i) to maintain MSE's equity at not less than 35% of its capitalization and (ii) to enable MSE to complete construction of the Grand Gulf Plant, to provide for MSE's pre-operating expenses and interest charges, to permit commercial operation of the Grand Gulf Plant and continuation of operation thereafter, and to enable MSE to pay in full at their stated maturity all notes of MSE issued under the Bank Loan Agreement described below. As of December 31, 1978, MSU had purchased 272,000 shares of the common stock, no par value, of MSE for the aggregate amount of $272 million.

Under the Service Agreement, MP&L agreed to design, construct, operate and maintain the Grand Gulf Plant as agent for MSE. At all times since June, 1974, MP&L has engaged in such activity on behalf of MSE. Under the Availability Agreement, (i) MSE agreed to complete the Grand Gulf Plant, to join in the Middle South System interconnection agreement ("System Agreement"), on or before the completion of the first unit of the Grand Gulf Plant and to sell to the parties to the System Agreement power available from the Grand Gulf Plant under the terms of the System Agreement, and (ii) the System Companies agreed to pay to MSE such amounts as, when added to any other amounts received by MSE, would at least equal MSE's operating expenses, such payments to commence on the date on which the first unit of the Grand Gulf Plant is placed in commercial operation, but not later than December 31, 1982. Under the Bank Loan Agreement, the banks agreed to lend MSE up to $308.5 million through December 31, 1979, payable December 31, 1982. Pursuant to Commission orders dated December 10, 1975 and August 4, 1976 (HCAR Nos. 19295 and 19639) the commitment of the banks was increased to $353.5 million in December, 1975, and to $465 million in August,

1976 and additional banks were added as lenders.

On June 30, 1977, pursuant to Commission orders dated June 24, 1977 (HCAR Nos. 20090 and 20091) MSE entered into an Amended and Restated Bank Loan Agreement with Manufacturers Hanover Trust Company, as agent, and a group of 28 banks, entered into a First Supplementary Capital Funds Agreement and Assignment.

Under the Amended and Restated Bank Loan Agreement, the banks agreed (i) to lend MSE up to $565 million, (ii) to permit MSE to repay and reborrow any of such amounts at any time, and (iii) to extend the time through which MSE could borrow such amounts from December 31, 1979 to December 31, 1982. As of December 31, 1978, MSE had borrowed $237 million from the banks under the Amended and Restated Bank Loan Agreement.

Concurrently, MSE, the System Companies and Manufacturers Hanover Trust Company, as agent for the banks, entered into a First Assignment of Availability Agreement, Consent and Agreement whereby MSE assigned to the agent for the benefit of the banks all of MSE's rights to receive moneys from the System Companies under the June, 1974 Availability Agreement in respect of the Grand Gulf Plant and the System Companies agreed that their obligations to make payments to MSE under the June, 1974 Availability Agreement were unconditional.

Also on June 30, 1977, pursuant to Bond Purchase Agreements with a group of 15 institutional investors MSE issued and sold $400 million of its First Mortgage Bonds, 9.25% Series due 1989. These Bonds were secured by (i) a Mortgage and Deed of Trust, dated as of June 15, 1977 to United States Trust Company of New York and Malcolm J. Hood, as Trustees, as supplemented by a First Supplemental Indenture, dated as of June 15, 1977, (ii) a Second Supplemental Capital Funds Agreement and Assignment by and between MSE, MSU and the Trustees containing terms substantially identical to the terms of the First Supplementary Capital Funds Agreement and Assignment described above, and (iii) a Second Assignment of Availability Agreement, Consent and Agreement by and between MSE, the System Companies and the Trustees containing terms substanially identical to the terms of the First Assignment of Availability Agreement, Consent and Agreement described above. The proceeds of this Bond sale were applied to reduce borrowings by MSE under its Bank Loan Agreement.

MSE now proposes to issue and sell not in excess of $400 million of a new series of its First Mortgage Bonds ("Bonds") in a private placement transaction with institutional investors to be identified. It is contemplated that $200 million of those bonds will be issued in the fourth quarter of 1979 and $200 million in the first quarter of 1980. The Bonds will be issued and sold under a supplemental indenture of indentures to MSE's existing Mortgage and Deed of Trust, as supplemented and will have such other terms and conditions, including interest rate, maturity date and redemption and sinking fund provisions, be secured by such means and be sold in such manner and at such price, as shall be determined through negotiations with the purchasers and approved by the Commission.

MSE will apply the net proceeds from the issuance and sale of the Bonds to the repayment of borrowings then outstanding under its Amended and Restated Bank Loan Agreement. Such borrowings are expected to total approximately $500 million by the end of 1979 and (assuming the issuance and sale of $200 million of Bonds in 1979) approximately $384 million by the end of the first quarter of 1980. These amounts approach MSE's present long-term bank borrowing capacity of $565 million. If no Bonds are sold, MSE's presently authorized borrowing capacity under its Amended and Restated Bank Loan Agreement would be fully utilized in early 1980 and MSE would then be forced to either arrange alternate sources of capital or suspend construction of the Grand Gulf Plant. Since amounts repaid under the Amended and Restated Bank Loan Agreement can be reborrowed at any time after being repaid, the Bond sale will enable MSE to continue using bank borrowings under such Agreement to continue the construction of the Grand Plant.

The sale of up to a 10% interest in the Grand Gulf Plant to South Mississippi Electric Power Association ("SMEPA") may occur in mid-1979. Following this sale, SMEPA would participate in funding construction of the Grand Gulf Plant, which would reduce somewhat MSE's capital needs. However, it is stated that the full $400 million of bonds should be sold as proposed.

The terms and conditions of the Bonds and the related supplemental indenture or indentures will be supplied to the Commission by post-effective amendment in this file, and such securities will not be issued and sold until the Commission shall have entered a supplemental order authorizing same.

MSE states that it is not appropriate to offer these bonds for competitive bids under Rule 50. MSE's only property is still under construction, so it lacks an earnings and operating history. It considers that the complex financing arrangements described above, the large amounts of additional capital and time required before the project can be completed and placed in service, and the risks inherent therein, together with the size of the financing, make negotiated placement of the bonds with institutional investors the proper method of raising this long term capital.

For the foregoing reasons MSE has requested that the Commission grant it an exception from the competitive bidding requirements of Rule 50 so that MSE may negotiate with prospective purchasers for the direct private placement of the Bonds. It is stated that such negotiations will provide the parties with the flexibility required to determine the appropriate terms for the Bonds in light of MSE's circumstances and the needs of the purchasers and will enhance MSE's chances for obtaining construction funds for the Grand Gulf Plant in accordance with its desired schedule.

Subject to obtaining any necessary regulatory approval, MSE has retained The First Boston Corporation to assist it in structuring the proposed financing and in identifying potential purchasers of the Bonds.

It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction. It is further stated that a statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment.

Notice is further given that any interested person may, not later than March 19, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact of law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is or-

dered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-6235 Filed 3-1-79; 8:45 am]

[8010-01-M]

[Release No. 15580; SR-PHLX-78-12]

PHILADELPHIA STOCK EXCHANGE, INC.

Order Approving Proposing Rule Change

FEBRUARY 23, 1979.

On May 26, 1978, the Philadelphia Stock Exchange, Inc. ("PHLX"), 17th Street and Stock Exchange Place, Philadelphia, Pennsylvania 19103, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which amends PHLX Rule 1033 to provide an exception to its priority rules for spread and straddle orders. The exception is applicable only when a spread or straddle order cannot be executed by accepting the established bid and/or offer in the marketplace.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 14871, June 21, 1978) and by publication in the FEDERAL REGISTER (43 FR 28875, July 3, 1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-6236 Filed 3-1-79; 8:45 am]

[8010-01-M]

[Release No. 15575]

SPECIAL STUDY OF THE OPTIONS MARKETS

FEBRUARY 22, 1979.

The Securities and Exchange Commission today announced a program for implementing certain of the recommendations made by the Special Study of the Options Markets (the "Options Study")[1] and for terminating the voluntary moratorium on further expansion of the standardized options markets.[2] Consistent with the scheme of self-regulation embodied in the Securities Exchange Act of 1934 (the "Act"), the Commission is asking each self-regulatory organization on which standardized options presently are traded or which has proposed to initiate a program for the trading of such options,[3] and the Options Clearing Corporation ("OCC"), to join with the Commission in a cooperative effort to implement many of the Options Study's recommendations, pursuant to the plan and projected timetable set forth in the latter part of this release.

The plan is based on a determination by the Commission that, before further expansion of the standardized options markets can be permitted, the deficiencies identified by the Options Study in the regulatory framework governing the standardized options markets must be corrected to insure that those markets operate in a manner consistent with the Act. The plan also reflects the Commission's conclusion that immediate implementation of a number of the Options Study's recommendations is necessary to achieve that goal. The Commission, therefore, is requesting the self-regulatory organizations to continue to honor the voluntary moratorium, by refraining from filling previously authorized but unfilled options classes and by deferring the filing of proposals that would expand or materially alter existing options trading programs, or that would initiate new options trading programs, until the steps outlined in this release for effectuating most of the Options Study's recommendations have been completed.

The plan set forth in this release specifies those actions the Commission asks each self-regulatory organization to take, and certain actions the Commission itself will take, in response to the Options Study's recommendations. These actions are grouped under three main headings: First, actions which must be addressed by the self-regulatory bodies and the Commission prior to expansion; second, actions which the Commission asks the self-regulatory organizations to consider and report on by the end of the year; and third, certain actions to be taken by the Commission. These actions, particularly those grouped under the first heading, are addressed primarily to the protection of investors, to be achieved, in large part, by self-regulatory rules concerning such matters as improper sales practices, determinations of suitability, misleading sales presentations, inadequate training and supervision of personnel, and internal controls through recordkeeping, together with improved self-regulatory surveillance and compliance procedures. The plan contemplates completion, within six months, of those actions which the Commission believes must be taken before the moratorium can be lifted. If the self-regulatory organizations agree to take the steps specified in the plan, the Commission intends to defer final action on proposed Securities Exchange Act Rule 9b-1(T).[4]

The Commission's request that the self-regulatory organizations act promptly, on a voluntary basis, to resolve the regulatory problems identified by the Options Study reflects the essential role each of these organizations must fulfill to maintain the integrity of the standardized options markets. Indeed, many of the Options Study's recommendations could not have been formulated without the assistance which the self-regulatory organizations provided to the Options Study staff in the course of its work. The Commission is confident that, through continued cooperation of this kind and a coordinated effort by the self-regulatory organizations and the Commission, the regulatory concerns which prompted the Commission's initial request for a voluntary moratori-

[1] The Report of the Options Study was made publicly available on February 15, 1979. *See* Securities Exchange Act Release No. 15569 (February 15, 1979).

[2] *See* Securities Exchange Act Release No. 13760 (July 18, 1977), 42 FR 38035 (July 26, 1977); Securities Exchange Act Release No. 14878 (June 22, 1978); Securities Exchange Act Release No. 15026 (August 3, 1978); and Securities Exchange Act Release No. 15485 (January 10, 1979).

[3] These are: the American Stock Exchange, Inc. ("Amex"); the Chicago Board Options Exchange, Incorporated ("CBOE"); the Midwest Stock Exchange, Incorporated ("MSE"); the National Association of Securities Dealers, Inc. ("NASD"); the New York Stock Exchange, Inc. ("NYSE"); the Pacific Stock Exchange Incorporated ("PSE"); and the Philadelphia Stock Exchange, Inc. ("Phlx").

[4] Securities Exchange Act Release No. 14056 (October 17, 1977), 42 FR 56706 (October 27, 1977).

um—concerns documented by the findings of the Options Study—can be substantially resolved, and the moratorium terminated, within the next six months.

As noted above, the Commission believes that the options moratorium should be terminated once the actions specified in its plan have been completed. To achieve that goal within six months, however, close cooperation among the self-regulatory organizations is essential. The Commission's resources are not sufficient to permit it to respond to separate and varying self-regulatory organization proposals to implement the Options Study recommendations within that relatively brief period of time. For this reason, the Commission has determined to urge the self-regulatory organizations to work together to develop, wherever possible, uniform responses to each of the Options Study's recommendations within the Commission's projected timetable for action on each recommendation. Only through such uniform and coordinated action will the Commission be able to complete action on these initiatives and terminate the moratorium within six months. If necessary, the Commission is prepared to act on its own initiative to implement the recommendations of the Options Study. The Commission does not believe, however, that it could conclude such action within the time frame contemplated by the plan.

Successful completion of the steps outlined in the plan will permit the Commission to begin considering proposals to expand existing options trading programs and to initiate new options trading programs. It will also enable the Commission to withdraw its request that self-regulatory organizations with existing standardized options trading programs refrain from filling previously authorized but unfilled options classes. The Commission will not, however, be in a position to give favorable consideration to expansionary options proposals filed by any self-regulatory organization which has failed to complete the actions specified in the plan. Indeed, such a failure could compel the Commission to take action to preclude any such organization from filling previously authorized but unfilled options classes, and to take such other remedial steps as it deems appropriate.[5]

Because the Options Study was released publicly only last week, the Commission wishes to solicit public comment on its contents and on the plan articulated herein to implement the Options Study's recommendations and to terminate the moratorium. The Commission believes, however, that the findings of the Options Study demonstrate that immediate and forceful action must be taken to correct deficiencies in the existing scheme of Commission and self-regulatory organization regulation of the standardized options markets. The Commission, therefore, is limiting to 30 days the comment period on its plan to implement the Options Study's recommendations. In addition, in order to proceed as expeditiously as possible, the Commission urges the self-regulatory organizations to begin immediately, and before the expiration of the comment period, to take the steps requested of them under the implementation plan.

The Commission will work closely with the self-regulatory organizations to ensure that all steps outlined in the plan are completed as efficiently and expeditiously as possible and within the time specified. In addition, although the plan is addressed primarily to the protection of retail customers, the Commission intends, during the next six months, to consider certain of the key options market structure issues discussed in the Options Study Report. The Commission plans to focus first on the addition of new standardized put options classes and on the question of whether restrictions should be placed on multiple or "dual" trading of standardized options. The Commission invites further public comment on these issues to assist it in its deliberations and to facilitate their resolution by the end of the six-month period. The Commission also intends to consider, in the near future, the proposed merger between the Chicago Board Options Exchange, Incorporated, and the Midwest Stock Exchange, Inc., and to announce its decision on that proposal as promptly as possible.[6]

To the extent it is able to do so, given other demands on its time and resources, the Commission also will begin considering, during the next six months, the remaining significant options market structure questions discussed in the Options Study Report, to prepare for final resolution of these questions in the context of specific expansionary proposals which may be filed by the self-regulatory organizations after termination of the moratorium. The Commission, however, cannot now commit itself to a firm timetable within which the difficult issues posed by certain of the proposals that may be filed can be resolved.

Comments in response to this release should be submitted in writing, and in triplicate, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and should refer to File No. S7-772. All submissions will be made available for public inspection at the Commission's Public Reference Section, Room 60101, 1100 L Street, NW., Washington, D.C. Comments on the Commission's plan and projected timetable for implementing the Options Study's recommendations should be submitted by March 26, 1979.

* * * * *

PLAN AND PROJECTED TIMETABLE FOR IMPLEMENTING CERTAIN RECOMMENDATIONS OF THE OPTIONS STUDY

On the basis of its review of the findings and recommendations of the Options Study Report, the Commission has determined that prompt action should be taken by the self-regulatory organizations and the Commission to ensure that the regulatory programs applicable to trading in standardized options satisfy the objectives and requirements of the Act. The Commission, threrefore, asks the NASD, the OCC, and each national securities exchange which presently trades, or has proposed to trade, standardized options to take the following steps to implement certain of the Options Study recommendations.

I. OPTIONS STUDY RECOMMENDATIONS WHICH MUST BE ADDRESSED PRIOR TO EXPANSION

Set forth below are those Options Study recommendations which the Commission believes must be addressed by the self-regulatory organizations and the Commission before further expansion of the standardized options markets is permitted to occur. In order to effect certain of the changes contemplated by these recommendations, the Commission asks the self-regulatory organizations to file with the Commission proposals to amend their existing rules or to adopt new rules. The Commission also r-

[5] The timetable contemplated by the Commission's plan is designed to afford all self-regulatory organizations an opportunity to complete, within six months, the steps requested of them as a prerequisite to expansion. The timetable also reflects the Commission's estimate of the time within which it will be able to respond to these initiatives, provided that the proposed rule changes necessary to carry out the Options Study's recommendations are uniform and are presented simultaneously to the Commission as specified in the plan. If the plan is successful, the Commission expects to remove the moratorium as to all self-regulatory organizations at the same time. Thus, the existing options exchanges could begin to fill previously authorized but unfilled options classes simultaneously and the Commission would be in a position to consider expansionary proposals filed thereafter by any self-regulatory organization. The Commission wishes to emphasize, however, that if its implementation plan does not proceed as scheduled, it may be necessary to extend the moratorium, either on a voluntary basis or by formal Commission action, as to some or all self-regulatory organizations.

[6] *See* File Nos. SR-MSE-78-30 and SR-CBOE-78-34, Securities Exchange Act Release Nos. 15494 and 15495 (January 12, 1979), 44 FR 4073 (January 19, 1979).

quests the self-regulatory organizations to make certain improvements in their surveillance and compliance procedures. In the case of particular recommendations which the Commission believes may take longer than six months to implement fully, notwithstanding an earnest effort by the self-regulatory organizations, the Commission asks the self-regulatory organizations to undertake to complete their implementation efforts by a specified date. The Commission will work closely with the self-regulatory organizations to assure that the problems and regulatory deficiencies identified by the Options Study are corrected as promptly as possible.

A. OPTIONS STUDY RECOMMENDATIONS WHICH CALL FOR SELF-REGULATORY ORGANZIATION RULE CHANGE PROPOSALS

The Commission asks the self-regulatory organizations to submit proposals to amend their existing rules, or adopt new rules, which will implement the Options Study recommendations listed below. In order to realize the Commission's objective of terminating the voluntary moratorium on expansion of the options markets in six months, it will be necessary for the self-regulatory organizations to work together to develop uniform rule proposals which will realize the objectives of each of these recommendations; to file all uniform proposals relating to a particular recommendation at the same time; and to complete the submission of these proposals no later than 90 days from the date of this release. The Commission also asks the self-regulatory organizations to begin filing their uniform proposals as promptly as possible and to stagger their filings throughout the ninety-day period according to a schedule agreed upon by all of them and submitted to the Commission. The Commission intends to complete its review and action on each group of uniform rule proposals within 90 days after they are filed.

The Commission believes that uniform self-regulatory organization rules are necessary and appropriate in this context since most of the problems identified by the Options Study which can be corrected by self-regulatory organization rule changes are industry-wide and bear little or no relationship to operational differences among the self-regulatory organizations.[7] Uniformity also will help to reduce the compliance burdens on those brokers and dealers which are members of two or more self-regulatory organizations. In addition, uniform and simultaneously-filed rule change proposals will reduce substantially the amount of Commission and staff time required to review the proposals, and will permit the Commission to issue a consolidated notice of the filing of, and a consolidated order reflecting its action on, all uniform self-regulatory organization proposals to implement each Options Study recommendation. Uniformity and simultaneous filing of these proposals, therefore, will be essential if the Commission is to meet its goal of completing action on these proposals within 90 days after they are filed.

The Commission recognizes that the self-regulatory organizations and their member firms may require additional time to comply with certain of the rule changes recommended by the Options Study (identified in § 2 below) and, in those instances, the Commission requests that the self-regulatory organizations file the necessary rule changes within the next 90 days, but provide that the rules shall be effective as of a specified future date agreed upon by all of them.

For the reasons discussed above, the Commission requests that the self-regulatory orgnaizations specify uniform effective dates for all proposals relating to a particular recommendation.

In some instances, the Commission has determined that the self-regulatory organizations should be given the opportunity to develop alternative solutions to the concerns underlying the Options Study's recommendations. With respect to those recommendations (identified in § 3 below), the Commission asks that the self-regulatory organizations submit undertakings to develop appropriate methods, through rules or otherwise, of preventing the abuses identified by the Options Study which these recommendations address.

1. *Options Study recommendations which the self-regulatory organizations are asked to implement by filing, within the next 90 days, uniform rule change proposals to become effective immediately upon approval by the Commission.* a. The self-regulatory organizations ("SROs") should amend their options rules (i) to provide a standard options information form which requires that broker-dealers obtain and record sufficient data, as specified by the rules, to support a suitability determination; and (ii) to require firms to adopt procedures to insure that all the information on which account approval is based is properly recorded and reflected in the firm's records. (Ch. V, p. 66).[8]

b. The SROs should amend their options account opening rules to require that (i) the management of each firm send to every new options customer for his verification a copy of the form containing the customer's suitability information; and (ii) the source(s) of customer suitability information, including the basis for any estimated figures, be recorded on the customer information forms. (Ch. V, p. 62).

c. The SROs should amend their rules to require that member firms semi-annually confirm the currency of customer suitability information. (Ch. V, p. 69).

d. The SROs should adopt record-keeping rules which require that member firms keep copies of account statements, and background and financial information for current customers, and maintain these records both in a readily accessible place at the sales office at which the customer's account is serviced and in readily accessible headquarters office location. (Ch. V, p. 75).

e. The SROs should revise their options customer suitability rules to prohibit a broker-dealer from recommending any opening options transaction to a customer unless the broken-dealer has a reasonable basis for believing the customer is able to evaluate the risks of the particular recommended transaction and is financially able to bear the risks of the recommended positions. (Ch. VI, p. 55).[9]

f. The SROs should adopt record-keeping rules which require member firms which have branch offices to

[7] The Commission realizes that nothing in the Act or the Commission's rules thereunder requires self-regulatory organizations to act in this kind of coordinated manner in responding to common regulatory needs. Without such action, however, in this instance, it would be impossible to adhere to the six-month timetable for termination of the options moratorium.

[8] References are to chapters and page numbers of the Options Study Report which contain each recommendation. The text of the Options Study Report preceding each of the recommendations explains the recommendation and the concerns underlying it.

[9] The Options Study also made the following related recommendation:

The rules of the SROs should be amended to prohibit firms from recommending opening options transactions to any customer who refuses to provide information, and for whom the firms do not otherwise have independently verified information sufficient for the suitability determination. (Ch. V, p. 56-57).

The Commission believes that, if the self-regulatory organizations amend their suitability rules as recommended in paragraph e, above, those rules, together with self-regulatory organization guidelines and interpretations, should be sufficient to prevent the type of sales practice abuses which the above-quoted recommendation was designed to address. The Commission requests the self-regulatory organizations to consider, however, whether a separate amendment to their suitability rules is necessary to correct the abuses which may result from customer refusals to furnish suitability information to member firms. The Commission also intends to consider the need for such a rule and to closely oversee the enforcement and effectiveness of self-regulatory organization suitability rules in its continuing review of the investor protections applicable to the options markets.

keep copies of customer complaints, customer suitability information and customer account statements at both the branch office where the account is serviced and the headquarters office. (Ch. V, p. 38).

g. The rules of the SROs should be amended to require that brokerage firms assign at least one high ranking person who is qualified as a Registered Options Principal ("ROP") to perform, or to directly supervise, home office compliance procedures relating to options. The rules should provide that, absent a clear showing of compelling circumstances, this person have no sales function, direct or indirect, relating to options or otherwise. (Ch. V, p. 47).

h. The SROs should amend their rules: (i) To require member firms to notify SROs promptly in writing of all internal disciplinary actions against employees, and (ii) to provide that when a registered individual's employment is terminated or he resigns from a member firm, the SRO shall retain jurisdiction over the individual for a reasonable time. The SROs should also vigorously enforce member firm compliance with the notification requirements. (Ch. VI, p. 44).

i. The SROs should amend their rules to require (i) that whenever rates of return in options accounts are calculated for disclosure to investors, all relevant costs must be included in the computation; and (ii) that whenever annualized returns are used to express the profitability of an options transaction, all material assumptions in the process of annualizing must be disclosed to the investor and a written record of any rate of return quoted to a customer must be kept. (Ch. V, p. 110).

j. The SROs should (i) develop uniform standardized options worksheet forms which require disclosure of all relevant costs and other information, including an appropriate discussion of the risks involved in proposed transactions; and (ii) prohibit the use of any options worksheets other than the new uniform formats and require that all items in the new worksheets be completed whenever used. (Ch. V, p. 130.

k. The SROs should require that copies of all options worksheets which are shown or sent to existing or prospective customers, or which are used as the basis for any sales presentation to a customer, be retained by member firms for an appropriate time in a separate file in the sales office with which the customer has an account. (Ch. V, p. 132).

l. The SROs should amend their rules to require that:

(i) All performance reports shown, given or sent to customers by member firms be initialed by the firm's local office supervisor to indicate a determination by that supervisor that the performance report fairly presents the status of the account or the transactions reported upon;

(ii) Copies of all such performance reports shown, given or sent to customers be retained by member firms in a separate file at the local sales office. (Ch. V, p. 133).

m. The SROs should amend their rules to require member firms to adopt promptly a uniform method for the random allocation of exercise notices among customer accounts. (Ch. V, p. 192).

n. The SROs should require member firms to keep sufficient specific workpapers and other documentation relating to allocations of exercise notices in proper order of time so that a firm's compliance with the uniform exercise allocation system can be verified promptly for an appropriate period. (Ch. V, p. 194).

o. The SROs should adopt rules (i) to require all registered market makers to report to the SROs, promptly and in writing, all accounts, for stock and options trading, in which they have an interest or through which they may engage in trading activities, and (ii) to prohibit trading by market makers through accounts other than those reported. (Ch. IV, p. 34).

p. The SROs should adopt rules requiring all registered options market makers to report to the SROs by appropriate means and on a daily basis: (i) The time that each stock order for the market maker's account, or an account in which he has an interest was transmitted for execution; (ii) the type and terms of each order; (iii) the time reports of any executions were received, and the volume and prices of those executions; and (iv) the opening and closing stock positions for each account in which the market maker has an interest. (Ch. IV, p. 33).

q. All SROs should (i) issue interpretations of their rules to make clear that frontrunning by their members is inconsistent with just and equitable principles of trade and (ii) take prompt disciplinary action against those members who have been found to have engaged in frontrunning. (Ch. III, p. 64).

2. *Options Study recommendations which the Commission asks the self-regulatory organizations to implement by filing, within the next 90 days, uniform rule change proposals to become effective upon approval by the Commission, or, if additional time is needed for the self-regulatory organizations or their member firms to comply with these rule changes, on a future effective date, no later than the end of this year, mutually agreed upon by the self-regulatory organizations.*

a. The SROs should adopt rules requiring the account statement of each options customer to show (i) the equity in the customer's account with all options and other securities positions marked to market; (ii) the profit or loss in the account for the year to the date of the statement; and (iii) the amount of margin loans outstanding as well as commission charges applicable to each transaction and other expenses paid or payable for the period covered by the account statement and the year to the date of the statement. (Ch. V, p. 85).

b. The SROs should adopt rules to require that the principal supervisor of any and all offices accepting options transactions be qualified as an ROP. (Ch. V, p. 35).

c. The SROs should amend their rules to require that each options customer over whose account discretion is to be exercised shall be provided with a detailed written explanation of the nature and risks of the program and strategies to be employed in his account. (Ch. V, p. 184).

d. The SROs should amend their rules to require that the Senior Registered Options Principal ("SROP") of each brokerage firm personally make a determination that each discretionary customer understands and can bear the financial risks of each options trading program or strategy for which it is proposed that the customer grant investment discretion to the firm or any of its employees; and that the SROs make and maintain a record of the basis for each such determination. (Ch. V, p. 185).

e. The SROs should adopt rules requiring that the headquarters office of each broker-dealer accepting options transactions by customers be in a position to review each customer's options account on a timely basis to determine (i) commissions as a percentage of the account equity; (ii) realized and unrealized losses in the account as a percentage of the customer's equity; (iii) unusual credit extensions; and (iv) unusual risks or unusual trading patterns in a customer's account. (Ch. V, p. 182).

f. The SROs should adopt rules to require that the training of registered representatives who recommend options transactions to customers be formalized to include a minimum number of hours of approved classroom and on-the-job instruction. (Ch. V, p. 13).

g. The SROs should establish and maintain a central data file to be available to and used in common by all SROs, containing all customer complaints received directly by the SROs and the disposition of such complaints; the SROs should amend their rules to require their member firms to submit all complaints received from

customers, and the disposition thereof, to the central data file. (Ch. VI, p. 41).

3. *The Options Study recommendations listed in this category call for specific changes in self-regulatory organization rules and are designed to curb the use, by broker-dealers and their registered representatives who sell listed options to public investors, of the types of misleading options sales presentations and promotional materials which are discussed in the text of the Options Study Report preceding each recommendation. The Commission believes that the self-regulatory organizations must act promptly to correct the sales practice abuses identified by the Study which underlie these recommendations, either through the adoption of the rule changes recommended by the Study or by other means which the self-regulatory organizations believe will best achieve these goals. The Commission, therefore, asks the self-regulatory organizations to submit, within the next 90 days, written undertakings detailing their plans for addressing these abuses, together with target dates by which they intend to complete their efforts.*

a. The SROs should take steps, by amending their rules or otherwise, to require that registered representatives be prohibited from showing the performance report of the options account of one customer to other existing or potential customers, unless composite figures which fairly present the performance of all that registered representative's customer options accounts during the same period are shown. (Ch. V, p. 133).

b. The SROs should take steps, by amending their rules or otherwise, to require that member firms make available for public inspection unequivocal and comprehensive evidence to support any claims made on behalf of options "programs" or the options "expertise" of salespersons. (Ch. V, p. 114).

c. The SROs should take steps, by amending their rules or otherwise, to require that when member firms use seminars to promote options, they make the following disclosures to those attending:

If the "lecturer" in the seminar is a brokerage firm employee compensated in whole or part by commissions, and is using the seminar technique to attract customers, his financial interest in the acquisition of customers from the audience should be disclosed;

If a "program" or "system" described in the seminar is already in use, the cumulative experience of the program's participants should be fully disclosed and documented, and the audience should be warned that past results are no measure of future performance;

If the program is too new to have a performance history, the audience should be fully apprised of the untried nature of the program. (Ch. V, pp. 119-120).

B. *Options Study Recommendations Which Call for Improvements in the Self-Regulatory Organizations' Surveillance and Compliance Procedures*

The Options Study recommendations in this category are designed to ensure improvements in the compliance and surveillance procedures of the self-regulatory organizations and to address deficiencies found by the Options Study. The Commission asks that, within the next 90 to 120 days, the self-regulatory organizations make certain of the recommended changes (identified in § 1 below). To the extent practicable and consistent with the variations in the surveillance systems employed by each self-regulatory organization, the Commission asks the self-regulatory organizations to work together to develop uniform methods of responding to these recommendations of the Options Study. The Commission asks the SROs to submit to the Commission written documentation of the steps taken to implement these recommendations. The Commission will review the documentation supplied and, whenever necessary, will conduct on-site inspections of the self-regulatory organizations to determine whether the modifications fulfill the objectives of the Options Study's recommendations. The Commission also will work with the self-regulatory organizations to remedy promptly any perceived deficiencies in the changes made.

In the case of those recommendations for improved surveillance and compliance procedures which may require more than 120 days to implement (identified in § 2 below), the Commission has asked the self-regulatory organizations to submit, within 120 days from the date of this release, written undertakings detailing their plans for implementing these recommendations and to supply target dates by which they will complete these efforts. Wherever possible, the Commission has asked that action on these recommendations be completed within the next six months, but in any event no later than the end of this year.

1. *Options Study recommendations which the Commission asks the self-regulatory organizations to implement within the next 90 to 120 days by modifying their compliance and surveillance procedures.*

a. The Amex should establish a complete audit trail for each option transaction that takes place on the Amex floor and should submit a complete report on the results of its "pilot test" of such an audit trail within 90 to 120 days of the date of this release. (Ch. IV, p. 25)

b. The SROs should revise their account selection procedures when conducting routine examinations to ensure the use of a statistically valid random selection of accounts together with an account selection process designed to identify those accounts which have a higher probability of being the subjects of particular sales practice abuses than other accounts. (Ch. VI, p. 52).

c. In investigating complaints, inquiries or questionable activities, SROs should develop procedures which assure timely independent verification of evidence, in a manner suggested in Chapter VI of the Report, whenever such verification is obtainable. (Ch. VI, p. 61).

d. SROs should interview public customers regularly, as part of routine or cause sales practice examinations, whenever such interviews would be germane to the resolution of factual disputes or to ascertain facts necessary to determine whether there is a reasonable likelihood that an SROs rule or provision of law has been violated. (Ch. VI, p. 20).

e. The SROs should use due diligence to ascertain all relevant facts before closing a cause examination or investigation without action and should determine, and keep a record of the bases for determining, whether there is a reasonable likelihood that an SRO rule or provision of law has been violated.

The SROs should establish procedures to assure that interviews with, or testimony of, members, supervisors, salespersons and others is obtained regularly in sales practice cause and routine examinations when necessary to determine whether there may have been a violation of the applicable laws or rules, to verify information obtained from other sources, or to resolve disputed issues of fact. (Ch. VI, p. 62).

f. The SROs should routinely request access to any relevant compliance information retained by government agencies, including the Commission, in connection with routine or cause sales practice examinations. (Ch. VI, p. 33).

g. The SROs should make and retain a written record of each oral customer complaint, made in person or by telephone, evaluate each such complaint carefully, and take such complaints into consideration in planning routine and cause examinations. (Ch. VI, p. 20).

h. The SROs should retain a record of the results of each routine or cause examination, setting forth reasons why no action was taken when apparent violations were detected or why only informal disciplinary action was

initiated, and should ensure that such records are reviewed periodically by each SRO's governing board or committee. (Ch. VI, p. 80).

i. The Amex should form a special committee of its Board of Governors that will review the investigation and enforcement activities of the exchange. The committee should be composed of floor and non-floor members, exchange officials and a representative of the public. In addition to its general review, the committee should specifically examine, at least every six months, every investigative file in which the investigative and enforcement activities of the staff have been completed.

Each investigative file should identify the reasons that the investigation was initiated, the steps that were taken to investigate the matter, the conclusions that were reached concerning each aspect of the potentially violative conduct, the rationale for each conclusion, and full documentation to support the result. (Ch. IV, pp. 63-64).

j. The SROs should adopt a policy whereby a copy of each letter of caution or other document noting an informal disciplinary action against a registered representative is sent to the current employer of that registered representative and to the firm which employed him at the time of the violation which resulted in such action. (Ch. VI, p. 75).

k. The SROs should restrict informal disciplinary actions to those cases involving minor, isolated rule violations that do not involve injury to public customers. (Ch. VI, p. 75).

1. The SROs should develop a program in which surprise attendance by SRO representatives at seminars presented by their member firms forms part of their overall inspection program relating to options sales practices. (Ch. V, p. 120).

m. CCC should implement the revisions in its adjustment procedures described in the Options Study Report. (Ch. IV, p. 43).

2. *Options Study recommendations with respect to which the Commission asks the self-regulatory organizations to submit, within 120 days from the date of this release, undertakings to modify their compliance and surveillance procedures and target dates for completion of those efforts.*

a. The SROs should revise and broaden their sales practice examinations, including their checklists and guidelines, to (i) assure that examiners will review all aspects of a firm's procedures and dealings with the public, including the solicitation of customers and marketing of securities, (ii) provide that each sales practice examination will include a thorough evaluation of the firm's internal compliance system, and (iii) provide for on-site inspections of branch offices as appropriate. (Ch. VI, p. 50).

b. The SROs should conduct more comprehensive analyses of customer account, including an evaluation of the number and type of transactions in the account, relative risks, actual and unrealized profits and losses, commissions, and suitability of trading strategies for individual customers. SROs should also develop and use computerized systems to aid in the analysis of customer accounts. (Ch. VI, p. 58).

c. The SROs should develop standards for the establishment of minimum compliance programs for implementation by each SRO; the programs should provide industry-wide objectives for the monitoring, examination and disciplinary programs of the SROs and provide standards by which the success of the programs would be measured. (Ch. VI, p. 84).

d. The SROs should revise the registered representative "options qualifying" examinations to require a thorough knowledge of options and of the options exchange rules designed to protect customers. These examinations should be readministered to all options salespersons, and all examinations should be given under controlled surroundings by independent examiners. (Ch. V, p. 12).

e. The ROP qulaifications examination should be revised substantially to test candidates' understanding of supervisory requirements relating to options as well as their knowledge of options.

All ROPs should be required to successfully complete this revised version of the examination administered under controlled conditions. (Ch. V, p. 31).

f. The SROs should devise a uniform detailed program for supervision of options trading within member firms which would establish minimum supervisory standards and procedures and which would address the issues raised in and incorporate the recommendations of Chapter V of the Options Study Report among those standards and procedures. (Ch. V, p. 45).

g. The SROs should create a central repository of regulatory information about their common members and employees of such members (in addition to the central complaint file described at p. 13, *supra.*) for shared used on a day-to-day basis. (Ch. VI, p. 30).

h. The SROs should develop standards for minimum position and transaction reporting rules and standardized inquiry forms. (Ch. IV, p. 55).

i. The SROs should consider, and report to the Commission their conclusions, regarding the feasibility of identifying the actual time that a trade is executed to supplement surveillance information that is currently captured. (Ch. IV, p. 25).

j. The SROs and their member firms should work to establish an economical method for identifying and distinguishing member firm proprietary and customer stock orders and transactions. (Ch. IV, p. 36). The SROs should report to the Commission what steps they intend to take to implement this recommendation within 45 days from receipt of the SIAC report on the feasibility and cost of distinguishing between proprietary and customer trades in the stock clearing process, and provide a target date for implementation of this recommendation.

k. The SROs should use the integrated surveillance data base that they are establishing for stock and options trading to detect unlawful trading activities and conduct appropriate enforcement actions and to identify patterns of stock and options trading that should be regulated or prohibited. The SROs' suggestions as to priorities for these studies should be submitted to the Commission within 90-120 days. The SROs should regularly report the results of such studies as they actually conduct to the Commission. (Ch. III, p. 58).

C. *Options Study Recommendations Which Require Joint Action by the Commission and the Self-Regulatory Organizations*

Several of the Options Study's recommendations which the Commission believes should be implemented before further expansion of the standardized options markets is permitted call for joint action by the Commission and the self-regulatory organizations to assure that adequate surveillance programs are in place at the OCC and each self-regulatory organization which trades standardized options. The Commission's Division of Market Regulation will work closely with the self-regulatory organizations to assure that these recommendations, listed below, are fully implemented within the next six months.

1. When conducting oversight inspections of the options exchanges, the Commission should review the surveillance techniques that each options exchange is using to assure that the most effective techniques available are being employed. (Ch. IV, p. 54).

2. The Commission should conduct a complete investigation of the MSE options surveillance program. The inspection should seek to determine whether the MSE has the ability to enforce compliance with the Act, the rules and regulations thereunder, and MSE rules with respect to options trading on the MSE floor. Ch. IV. p. 65).[10]

---

[10] The Commission recognizes that, in the event the proposed merger between the

Footnotes continued on next page

3. The Commission should follow the progress of the Amex closely to assure that the exchange enhances the capabilities of its surveillance system and establishes a proper audit trail as quickly as possible. The Commission should receive a status report from its staff on the progress of the Amex initiatives within 180 days. (Ch. IV, p. 29).

4. The Phlx should provide the Commission, within 90 days of the date of this release, with complete documentation regarding routine surveillance functions and investigations that the exchange performs showing that the Phlx is carrying out its statutory responsibilities properly. (Ch. IV, p. 59).

5. OCC should consider the feasibility of imposing a surcharge for position adjustments that firms effect above a certain number of contracts. The number of adjustments that a firm should be permitted without the imposition of the charge should be determined, giving full consideration to the number of contracts that the firm regularly clears. In addition, OCC should consider the feasibility of requiring its member firms to balance their records to OCC records on a daily basis. The OCC should study these issues and report its conclusions and recommendations to the Commission within 90 days. (Ch. IV, pp. 43-44).

II. *Options Study recommendations which the Commission asks the self-regulatory organizations to undertake to consider. The Commission asks the self-regulatory organizations to submit to the Commission, no later than the end of this year, reports on the progress of their consideration of these recommendations.*

The Commission asks the self-regulatory organizations to agree to consider the Options Study recommendations listed below, and to submit to the Commission, no later than the end of this year, reports on the progress they have made. Although the Commission encourages the self-regulatory organizations to begin considering these recommendations as promptly as possible, the Commission does not believe that these recommendations must be implemented, or that the self-regulatory organizations must complete their consideration of them, before expansion to the standardized options markets is permitted to occur.

1. The SROs should amend their rules in order specifically to permit the award of restitution as a disciplinary sanction, whenever such a sanction would be appropriate. (Ch. VI, p. 81).

2. OCC should review its margin and clearing fund deposit rules regarding OCC members that clear market maker accounts with a view to determining whether it would be appropriate to increase their market maker margin deposit requirements in order that the clearing fund deposits of OCC members that do not clear market maker accounts are not unreasonably subject to the risks of those that do clear these accounts. (Ch. VII, p. 31).

III. *Options Study Recommendations Which Require Action by the Commission.*

Many of the Options Study's recommendations call for action by the Commission. The Commission intends to implement immediately the recommended improvements in its self-regulatory organization inspection and oversight procedures and to continue to work with the self-regulatory organizations in their efforts to share surveillance and compliance information and better coordinate their self-regulatory activities. The Commission also intends to schedule the recommended inspection of the NYSE's market surveillance system as promptly as possible. The Commission intends to give priority in the allocation of its staff and other resources during the next six months, however, to responding to those actions it has requested the self-regulatory organizations to take and to addressing certain of the options market structure issues discussed in the Options Study Report. For this reason, action on certain of the Options Study recommendations listed below (recommendations 5 to 23), most of which call for Commission rulemaking initiatives, may be delayed.

1. Commission inspections of the Amex should emphasize a review of case files that are closed after investigation to assure that Amex enforcement responsibilities are properly carried out. (Ch. IV, p. 54).

2. The Commission should closely monitor the efforts of the SROs to share surveillance information and coordinate self-regulatory activities. The Commission should acknowledge by letter the formation of the self-regulatory conference and suggest that the use of Section 17(d)(2) of the Act and Rule 17d-2 thereunder to allocate surveillance responsibilities among the SROs is appropriate and desirable. In addition, the Commission should send a representative to future meetings of the conference. The Commission should also seek to coordinate its own surveillance operations with those of the SROs. (Ch. IV, p. 53).

3. The Commission should conduct a complete inspection of the NYSE market surveillance system to determine whether the exchange has the ability to carry out the purposes of the Act and to comply and enforce compliance by its members with the Act, the rules and regulations thereunder, and NYSE rules. Specifically, the inspection should consider whether the NYSE can detect, on a daily basis and for each stock traded on the NYSE, trading practices that may be inconsistent with the Act, the rules and regulations thereunder, or exchange rules. The inspection should be conducted and completed as expeditiously as possible and a complete report should be presented to the Commission within 60 days after the completion of the review.

In the event that the inspection reveals that the NYSE cannot fulfill its statutory responsibilities on a daily basis, the Commission should take appropriate remedial steps and should specifically consider requiring, by Commission rule, that the exchange collect and maintain essential surveillance information. (Ch. IV, pp. 30-31).

4. The Commission should transmit for inclusion in the central customer complaint file a record of relevant information about all broker-dealer complaints it receives unless release of such information would be contrary to law, would have an adverse effect upon a pending or proposed investigation, or otherwise would be inappropriate. (Ch. VI, p. 42).

5. The Commission should adopt a rule which requires SROs to notify the Commission of all informal remedial actions. (Ch. VI, p. 75).

6. The Commission should obtain and review all instances of option and stock trading which are or have been the subject of informal or formal investigations by the SROs. The Commission should review this data with a view toward proposing antimanipulative options and stock trading rules, where appropriate. (Ch. III, p. 58).

7. The Commission should adopt a special registration form under the Securities Act of 1933 for OCC which would not require OCC to describe information about options trading and should exercise its authority under the Exchange Act to require that a disclosure document filed under the Exchange Act describing options, their risks and the mechanics of options trading be prepared by OCC and be delivered by broker-dealers to each options customer at or prior to the time the customer opens an options account. (Ch. V, p. 92)

Footnotes continued from last page

CBOE and the MSE is consummated, this recommendation may become moot and that it may not be practicable for either the Commission or the MSE to expend the resources necessary to implement all of the Options Study recommendations. The Commission also recognizes that resolution of the questions presented by the merger proposal may affect the steps to be taken by the CBOE, as well as by the MSE and the Commission's staff, toward implementing certain of the Options Study's recommendations. For this reason, the Commission intends to address the merger proposal in the near future.

8. The Commission should consider recommending to the Federal Reserve Board that the clearing firms for market makers be permitted to finance positions in a stock underlying a market maker's options position on a good faith basis provided the market maker's specialist account contains only those shares necessary to hedge an options position, as determined in accordance with an appropriate options pricing formula. (Ch. VII, p. 75).

9. The SROs should revise their rules to restrict the ability of options market makers to obtain specialist stock credit to stock underlying no more than 20 options classes, without specific exchange approval. (Ch. VII, p. 77).[11]

10. The Commission should consider revising its net capital rule to establish requirements for upstairs dealers that take into consideration the effects on risk of spreading strategies in listed options and the existence of a secondary market in options. (Ch. VII, p. 58).

11. The Commission should consider revising its net capital rule to require market makers that do not carry customer accounts or clear transactions to maintain a minimum equity of $5,000. (Ch. VII, p. 46).

12. The Commission should consider revising its net capital rule to increase the deduction in computing net capital for near or at-the-money options by providing the deductions for short options positions in market maker accounts be equal to the greater of (i) 75 percent of the premium value, (ii) $75, or (iii) 5 percent of the market value of the underlying stock reduced by the amount by which the exercise price of the options varies from the current market price for the stock. (Ch. VII, p. 40).

13. The Commission should consider revising its net capital rule to require an additional charge in an OCC member's computation of its net capital for any net long or net short options positions in all market maker accounts guaranteed by the OCC member which are in excess of 10 percent of the open interest in the options class. This deduction should be equal to an additional 50 percent of the charge otherwise required for each series in that options class. (Ch. VII, p. 37).

14. The Commission should consider revising its net capital rule to limit the net capital deduction for market maker options conversion, reverse conversion or equivalent conversion positions to the maximum possible loss on these positions provided that in both cases the off-setting put and call options have the same exercise price and expiration date and are traded on an exchange. (Ch. VII, p. 52).

15. The Commission should consider revising its net capital rule to permit a market maker clearing firm one business day to obtain additional capital or market maker equity before meeting the net capital deductions arising out of its market maker clearing business. (Ch. VII, p. 49).

16. The Commission should consider revising its net capital rule so that the capital required for all of the positions in an account in which a clearing firm, its officers, partners, directors or employees maintain a financial interest are increased. This may be accomplished by requiring that such accounts meet the same financial requirements that are applicable to upstairs dealer firms. (Ch. VII, p. 48).

17. The Commission should consider revising its net capital rule to reduce the permissible amounts of gross deductions to net capital resulting from the options and stock positions carried by a clearing firm for market makers. (Ch. VII, pp. 41-42).

18. The Commission should issue an interpretive release or initiate rulemaking proceedings specifically to clarify that inter-market manipulative trading activity involving options and their underlying securities may violate Section 9. (Ch. III, p. 54).

19. The Commission should undertake a complete review of the position limit rules of the options exchanges. This review should include: (1) the possibility of eliminating position limit rules; (2) the feasibility of relaxing position limit rules (a) for all market participants, (b) for accounts which hold fully paid, freely transferable securities or (c) for "hedged" positions; and (3) whether exceptions from the rules should be granted to options specialists and, if so, under what circumstances. (Ch. III, p. 68).

20. The Commission should begin to study the most appropriate means of establishing a uniform method of identifying stock and option customers on a routine, automated basis. The Commission should review the NYSE and SIAC Report on this subject and should determine the steps that should be taken to establish a uniform account identification system in light of the Report. (Ch. IV, p. 39).

21. The Commission should consider the elimination of the restricted options rules as soon as the overall effectiveness of the Options Study's suitability recommendations can be evaluated. (Ch. III, p. 71).

22. The Commission should adopt, where feasible, rules to govern SECO broker-dealers [regarding minimum position and transaction reporting rules and standardized inquiry forms] which are parallel to self-regulatory organization rules. (Ch. IV, p. 55).

23. In the event that the SROs do not devise a method for easily identifying member firm proprietary and customer trading, the Commission should consider whether it is appropriate to require that they do so by Commission rule. (Ch. IV, p. 36).

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-6237 Filed 3-1-79; 8:45 am]

[11] The Commission will consider the need for adoption of this Options Study recommendation or some other form of restrictions on the use of exempt credit by options market makers in connection with its continuing review of specialist stock credit. Specifically, the Commission intends to consider whether, and to what extent, specialist stock credit should continue to be made available to various types of stock and options market makers in light of their market making obligations and their contributions to the maintenance of fair and orderly markets.

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Application No. 04/04-5148]

FEYCA INVESTMENT COMPANY

Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under Section 301(d) of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*) has been filed by Feyca Investment Company (applicant) with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1978).

The officers, directors and stockholders are as follows:

Jose L. Machado, 2030 Country Club Prado, Coral Gables, Florida 33134; Chairman of the Board, Director and 45 Percent Stockholder.

Felipe deDiego, 1841 S.W. 92nd Place, Miami, Florida 33165; President, Director and 5 Percent Stockholder.

Enrique Hector Lapadula, 9121 S.W. 21st Street, Miami, Florida 33165; Secretary, Treasurer, Director and 5 Percent Stockholder.

Carlos J. Rojas, 17843 S.W. 77 Court, Miami, Florida 33157, Vice Chairman, Director and 45 Percent Stockholder.

The applicant, a Florida corporation, will maintain an office at 2320 West Flagler Street, Miami, Florida 33135 and will begin operations with $305,000 of paid-in capital and paid-in surplus.

The applicant will operate within the investment policies of 107.101(c) of the regulations. The applicant anticipates being both equity and loan oriented in its investment decisions and policy. The applicant intends to initially work with individuals who are considered socially and/or economically disadvantaged oriented toward costrucition, contracting and development of various types of building.

As a small business investment company under Section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management and the probability of successful operations of the applicant under this management, including adequate profitability and financial soundness, in accordance with the Act and SBA Rules and Regulations.

Any person may, not later than 15 days from the date of publication of this notice, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Miami, Florida.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: February 23, 1979.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 79-6245 Filed 3-1-79; 8:45 am]

[4810-31-M]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

GRANTING OF RELIEF PURSUANT TO SECTION 925(c), TITLE 18, UNITED STATES CODE

Notice is hereby given that pursuant to 18 U.S.C. Section 925(c), the following named persons have been granted relief from disabilities imposed by Federal laws with respect to the acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year.

It has been established to my satisfaction that the circumstances regarding the convictions of each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the relief will not be contrary to the public interest.

Adam, Eugene A., 4245 5th Avenue, South, Lake Charles, Louisiana, convicted on October 16, 1967, in the Ninth Judicial District Court, Rapides Parish, Alexandria, Louisiana.

Archer, William P., 3845 Carole Drive, Doraville, Georgia, convicted on May 28, 1951, in the United States District Court for the Northern District of Georgia, Atlanta Division.

Beams, Irving J., RFD Box 101, Underhill, Vermont, convicted on May 31, 1973, in the District Court of Vermont, Circuit #2, Burlington, Vermont.

Boggs, George W., Box 541, Clark Hill, Olive Hill, Kentucky, convicted on October 6, 1954, in the Common Pleas Court of Richland County, Ohio.

Borup, John D., 3414 93rd Street, Sturtevant, Wisconsin, convicted on August 6, 1965, in the County Court of Racine County, Wisconsin.

Brown, Doffs N., Route 2, Box 38, Ponce de Leon, Florida, convicted on October 10, 1958, in the United States District Court, Northern District of Florida.

Brown, Earl M., 801 Airport Heights Road, Anchorage, Alaska, convicted on March 10, 1977, in the United States Court for the Southern District of Indiana, Indianapolis Division.

Brown, Morris E., 1907 Burrell Street, NW., Roanoke, Virginia, convicted on April 14, 1958, in the Hustings Court (now Circuit Court) of the City of Roanoke, Virginia.

Brown, Scott N., 401 Crewdson, Chattanooga, Tennessee, convicted on September 25, 1964, in the United States District Court, Eastern District, Tennessee, and on January 18, 1965, and on February 4, 1965, in the Criminal Court, Hamilton County, Tennessee.

Brumley, George I., 525 N. Meridian, Wichita, Kansas, convicted on November 27, 1944, in the United States District Court, East St. Louis, Illinois.

Bush, Claude H., E. 1014 Sanson, Spokane, Washington, convicted on April 24, 1964, in the Superior Court of the State of Washington in and for Pierce County.

Calzon, Nelson, 2324 Winterwood Boulevard, Las Vegas, Nevada, convicted on June 21, 1954, in the Criminal Court, Hillsborough County, Tampa, Florida.

Cantrell, Perry W., 1037 Sugar Loaf Lane, Anniston, Alabama, convicted on June 25, 1975, in the Alabama State Circuit Court, Anniston, Alabama.

Cipolla, James P., 153 Massachusetts Avenue, N. Andover, Maine, convicted on December 20, 1972, in the Superior Court, Criminal Docket, Essex, Massachusetts.

Corbin, Daniel E., 4185-A Manchester Street, St. Louis, Missouri, convicted on February 12, 1969, in the Circuit Court of the City of St. Louis, Missouri.

Cordell, Harold E., 601 West Montgomery, Creston, Iowa, convicted on November 18, 1965, in the Union County District Court, Iowa.

Crowder, Donald S., Route 2, Box 52A4, Camdenton, Missouri, convicted on April 22, 1974, in the Circuit Court for the County of St. Louis, Missouri.

Curtis, Larry L., 9196 Little Farm, Union Lake, Michigan, convicted on April 23, 1968, in the Circuit Court for the County of Oakland, Pontiac, Michigan.

Demos, Harry J., Sr., 406 Eastern Street, Grand Rapids, Michigan, convicted on March 23, 1970, in the Kent Circuit Court, Grand Rapids, Michigan.

Dennhardt, Alton W., 1821 38th Street, Moline, Illinois, convicted on September 17, 1965, in the United States District Court, Northern District of Illinois, Eastern Division.

Dobson, Phillip W., 2061-D Bronco Drive, Langley AFB, Virginia, convicted on June 15, 1973, in the Municipal Court, Sacramento County, California.

Ewing, George, 4020 Acord Drive, Knoxville, Tennessee, convicted on June 21, 1973, in the United States District Court for the Eastern District of Tennessee, Northern Division.

Flowers, William O., 7538 Sullivan Road, Baton Rouge, Louisiana, convicted on April 23, 1976, in the Nineteenth Judicial District Court, East Baton Rouge Parish, Louisiana.

Ford, Curtis, 4005 W. State Highway #3, Port Orchard, Washington, convicted on August 19, 1974, in the Kitsap County Superior Court, Port Orchard, Washington.

Gadison, Joseph, Jr., 119 Garland, Apartment 2, Flint, Michigan, convicted on October 4, 1971, in the Circuit Court of Genesee County, State of Michigan.

Gengler, Martin L., 2718 14th Avenue, South, Minneapolis, Minnesota, convicted on May 1, 1970, in the District Court of the South Judicial District, Hennepin County, Minnesota.

Giesecke, Roger K., 3220 E. 2nd Street, Wichita, Kansas, convicted on August 11, 1975, in the District Court, Sedgwick County, Kansas.

Granito, Gary A., 15428 N. Central Avenue, Phoenix, Arizona, convicted on October 11, 1972, in the Passaic County Superior Court, Passaic, New Jersey; and on November 14, 1973, in the Essex County Superior Court, Essex County, New Jersey.

Hanson, Steven M., 2740 9th Lane, Apt. 113, Anoka, Minnesota, convicted on May 15, 1974, in the District Court, Fourth Judicial District, County of Hennepin, State of Minnesota.

Hargrove, Connie R., 2504 McKleroy, Anniston, Alabama, convicted on January 23, 1974, in the United States District Court for the

Eastern Division of the Northern District of Alabama.

Hargrove, Raymond, 2504 McKleroy, Anniston, Alabama, convicted on January 23, 1974, in the United States District Court, Northern District of Alabama.

Hoffman, William M., 1105 South 3rd Street, Sauk Rapids, Minnesota, convicted on September 16, 1974, in the District Court, Ninth Judicial District, Itasca County, Minnesota; and on December 16, 1974, in the District Court for the Ninth Judicial District, Itasca County, Minnesota.

Holmes, Michael L., P.O. Box 52, Mineral, Washington, convicted on June 21, 1976, in the Superior Court, Lewis County, Washington.

Johnson, L. P., Route 2, Box 153, Ronda, North Carolina, convicted on November 16, 1942, on April 22, 1947, on May 23, 1952, on May 29, 1959, and on October 18, 1967, in the United States District Court, Wilkesboro, North Carolina.

Jones, Alan L., 2340 S. State Road 135, Greenwood, Indiana, convicted on June 24, 1969, in the United States District Court, Western District of Kentucky at Louisville.

Jones, Thomas E., 5712 Lakeshore Drive, Fond du Lac, Wisconsin, convicted on July 19, 1971, in the Circuit Court of Winnebago County, Winnebago, Wisconsin.

Kappell, Donald R., 224½ Franklin Street, Little Chute, Wisconsin, convicted on December 22, 1975, in the Circuit Court for the County of Outagamie, Wisconsin.

Kelly, Leonard R., 3018 Corksie, Houston, Texas, convicted on December 15, 1972, in the District Court of Hanes County, Texas.

Kieffer, James K., 11300 3rd Avenue, Seattle, Washington, convicted on October 6, 1969, and on February 25, 1972, in the Superior Court, King County, Washington.

Kirk, Roy C., 11 Lakeview Drive, Tuscaloosa, Alabama, convicted on June 14, 1976, in the Circuit Court, Sixth Judicial Circuit of Alabama, Tuscaloosa, Alabama.

Knoll, Kenneth L., 641 Koontz Road, Chehalis, Washington, convicted on September 22, 1975, in the Circuit Court, State of Oregon, Douglas County.

Lane, George V., 21655 — 23 Mile Road, Mount Clemens, Michigan, convicted on May 22, 1964, in the Circuit Court for the County of Washtenaw, Michigan.

Lawson, Jerome F., 1012 East 27th Street, Erie, Pennsylvania, convicted on December 9, 1965, in the Criminal Court of Erie County.

Lewis, Charles W., 922 Polk Street, Lynchburg, Virginia, convicted in May 1967, and on September 11, 1967, in the Lynchburg Corporation Court, Virginia.

McMillen, Gregory V., R.D. #3, Box 398, Kittanning, Pennsylvania, convicted on June 17, 1970, in the Court of Quarter Sessions of the County of Armstrong, Kittanning, Pennsylvania, Commonwealth of Pennsylvania.

Mabe, Philip K., Cedar Fork Road, Tazewell, Tennessee, convicted on January 7, 1974, in the Criminal Court of Washington County, Tennessee.

Magnuson, Eric J., P.O. Box 1142, Hwy. 2, West, Grand Forks, North Dakota, convicted on November 18, 1976, in the District Court, First Judicial District, Grand Forks County, North Dakota.

Marrison, Forrest L., 1601 Lyons Avenue, Lansing, Michigan, convicted on June 30, 1961, in the Ingham County Circuit Court, Lansing, Michigan.

Marshall, Vernon E., 2702 West 16th Street, North Platte, Nebraska, convicted on December 19, 1974, in the District Court, Lincoln County, Nebraska.

Martin, Harold D., R.R. #4, Box 172-19, Dahlonega, Georgia, convicted on June 6, 1960, in the United States District Court, Northern District of Georgia.

Meyers, Laurin J., 6285 North 170th Street, Hugo, Minnesota, convicted on November 10, 1955, in the District Court, Ramsey County, Minnesota, and on January 3, 1972, in the District Court, Ramsey County, Minnesota.

Molini, Joseph, W., 37-33 28th Street, Long Island City, New York, convicted on October 8, 1930, in the Supreme Court, Queens County, Criminal Term, New York.

Nemchik, Paul, 53 Briarcliffe Road, Glenolden, Pennsylvania, convicted on July 6, 1976, in the United States District Court, Eastern District of Pennsylvania.

Newkirk, Marlowe E., 1118 West 7th Street, Perris, California, convicted on January 22, 1953, in the United States District Court for the Westen District of Arkansas, Fort Smith Division.

Nuesse, Jack E., 11015 East Broadway, Spokane, Washington, convicted on March 25, 1974, in the Superior Court of the State of Washington for King County, Washington.

Perrow, Robert, 3840 58th Street, North, St. Petersburg, Florida, convicted on October 2, 1939, in the Kanawha County Court, West Virginia; and on October 13, 1949, in the Hustings Court of the City of Roanoke, Virginia.

Pomranky, Timothy S., 2717 S. Jefferson Avenue, Midland, Michigan, convicted on May 20, 1968, in the Circuit Court for the County of Alpena, Michigan.

Porter, Russell, R., 11871 144th Avenue, West Olive, Michigan, convicted on June 10, 1963, in the Circuit Court of Ottawa County, Michigan.

Redoux, Houston, 5620 N. Claiborne Avenue, New Orleans, Louisiana, convicted on May 26, 1947, in the State Court, Lake Charles, Louisiana.

Roberts, William S., Route 3, Box 77AA, Benton, Kentucky, convicted on November 2, 1976, in the United States District Court, Paducah, Kentucky.

Rohrer, David W., Box 147, Rt. 4, Quarryville, Pennsylvania, convicted on January 23, 1970, in the Lancaster County Common Pleas, Criminal Division Court, Pennsylvania.

Ross, William W., 3821 NW., 66th Street, Oklahoma City, Oklahoma, convicted on September 4, 1975, in the United States District Court for the Western District, Oklahoma.

Scimeca, John, 122 Slabey Avenue, Malverne, New York, convicted on August 26, 1958, in the Brooklyn Criminal Court, Brooklyn, New York; and on May 19, 1961, in the United States District Court, Southern District, New York, New York.

Seesholtz, Ronald Lee, 327 Sell Street, Johnstown, Pennsylvania, convicted on December 10, 1958, in the Court of Oyer and Terminer for Cambria County, Pennsylvania.

Shelby, Albert R., 23 Park Place, Short Hill, New Jersey, convicted on April 12, 1948, in the District Court of Hampshire County, Northampton, Massachusetts.

Siever, Charles H., 88 South Street, Keyser, West Virginia, convicted on May 19, 1977, in the United States District Court for the Northern District of West Virginia.

Simmons, Harold S., Highway 78, Myrtle, Mississippi, convicted on February 6, 1978, in the United States District Court, Northern District of Mississippi, Western Division.

Swaim, James C., Route 1, Box 381, Roaring River, North Carolina, convicted on November 18, 1957, in the United States District Court, Wilkesboro, North Carolina.

Tester, Alger E., Route 3, Flemingsburg, Kentucky, convicted on March 7, 1964, in the Mason County Circuit Court, Maysville, Kentucky.

Thunder, James, Route 1, Box 91, Crandon, Wisconsin, convicted on November 23, 1960, in the Oneida County Court, Wisconsin; and on December 18, 1962, in the Forest County Court, Wisconsin.

Torrence, Billy R., 424 St. Croix, St. Charles, Missouri, convicted on February 7, 1972, in the Circuit Court of St. Charles County, Missouri.

Wagner, Richard D., 1702 6th Avenue, North, Moorhead, Minnesota, convicted on November 24, 1976, by a General Court Martial, United States Army, Fort Bragg, North Carolina.

Williams, Buster, Route 3, Box 420, N. Wilkesboro, North Carolina, con-

victed on November 25, 1940, on May 16, 1944, on November 28, 1945, on November 20, 1959, in the United States District Court, Wilkesboro, North Carolina; and on September 24, 1963, in the United States District Court, Wilson, North Carolina.

Signed at Washington, D.C. this 9th day of January, 1979.

JOHN G. KROGMAN,
Acting Director, Bureau of Alcohol, Tobacco, and Firearms.

[FR Doc. 79-6203 Filed 3-1-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-125 (Sub-No. 2F)]

DURHAM & SOUTH CAROLINA RAILROAD CO. ABANDONMENT AND ABANDONMENT OF OPERATIONS BY NORFOLK SOUTHERN RAILWAY CO. AT DUNCAN AND BONSAL, IN WAKE COUNTY, N.C.; NOTICE OF FINDINGS

Notice is hereby given pursuant to Section 10903 of the Interstate Commerce Act (49 U.S.C. 10903) that by a Certificate and Decision decided February 8, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen*, 354 I.C.C. 584 (1978), and for public use as set forth in said decision, the present and future public convenience and necessity permit the abandonment by Durham and South Carolina Railroad Company (D&SC) and abandonment of operations by Norfolk Southern Railway Company (NS) of that portion of their Durham Branch extending from railroad milepost DD-0.0 at Duncan, NC, to railroad milepost DD-10.43 at Bonsal, NC, a distance of approximately 10.6 miles, in Wake County, NC. Trackage between milepost DD-0.0 and milepost DD-0.4 at Duncan will be retained and reclassified to permit continued service. A certificate of public convenience and necessity permitting abandonment was issued to the Durham and South Carolina Railroad Company and Norfolk Southern Railway Company. Since no investigation was instituted, the requirement of Section 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the FEDERAL REGISTER be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than 15 days after publication of this Notice. The offer, as filed, shall contain information required pursuant to Section 1121.38(b)(2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective April 16, 1979.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-6351 Filed 3-1-79; 8:45 am]

[7035-01-M]

[Docket No. AB-70 (Sub-No. 1F)]

FLORIDA EAST COAST RAILWAY CO.

Abandonment in Dade County, Fla.; Notice of Findings

Notice is hereby given pursuant to section 10903 of the Interstate Commerce Act (49 U.S.C. 10903) that by a Certificate and Decision decided February 8, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.-Abandonment Goshen*, 354 I.C.C. 584 (1978), the present and future public convenience and necessity permit the abandonment by the Florida East Coast Railway Company of a portion of a line of railroad known as the old main lines south of Miami to Kendall, extending from the Railway's milepost 365+1,018'+ near N.W. 8th Street, Miami, FL, to milepost 366+410'+ on or at the north bank of the Miami River, and milepost 366+620+ on or at the south bank of the Miami River to milepost 375+2,012'+ at Kendall, FL (the intervening segment was the Miami River Bridge which was abandoned pursuant to ICC Finance Docket No. 26742), a distance of approximately 10.19 miles in Dade County, FL. A certificate of public convenience and necessity permitting abandonment was issued to the Florida East Coast Railway Company. Since no investigation was instituted, the requirement of Section 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the FEDERAL REGISTER be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than 15 days after publication of this Notice. The offer, as filed, shall contain information required pursuant to Section 1121.38(b)(2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective April 16, 1979.

H.G. HOMME, Jr.,
Secretary.

[FR Doc. 79-6352 Filed 3-1-79; 8:45 am]

[7035-01-M]

NATIONWIDE AUTO TRANSPORTERS, INC.

AGENCY: Interstate Commerce Commission.

ACTION: Notice. Released Rates Application No. MC-1475.

SUMMARY: Nationwide Auto Transporters, Inc. seeks authority to publish released rates between point in the United States on personal effects not exceeding 500 pounds which owners may leave in automobiles tendered for transportation in driveaway service. The net effect will be to limit applicant's maximum liability to a value declared by the shipper, but not to exceed $250.

ADDRESSES: Anyone seeking copies of this application should contact: Mr. Allen F. Herman, President, Nationwide Auto Transporters, Inc., 140 Sylvan Avenue, Englewood Cliffs, New Jersey 07632.

FOR FURTHER INFORMATION CONTACT:

Mr. Max Pieper, Bureau of Traffic, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7553.

SUPPLEMENTARY INFORMATION: Relief is sought from 49 USC 10730, formerly Section 20(11) of the Interstate Commerce Act to publish released rates in tariffs of Nationwide Auto Transporters, Inc.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-6353 Filed 3-1-79; 8:45 am]

[7035-01-M]

[Docket No. AB-32 (Sub-No. 2F)*]

ROBERT W. MESERVE AND BENJAMIN H. LACY, TRUSTEES OF THE PROPERTY OF BOSTON & MAINE CORP., DEBTOR

Abandonment Near Acton and Maynard, in Middlesex County, MA, Notice of Findings

Notice is hereby given pursuant to Section 10903 of the Interstate Commerce Act (49 U.S.C. 10903) that by a Certificate and Decision decided January 29, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen*, 354 I.C.C. 584 (1978), the present and future public convenience and necessity permit the abandonment by Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation, Debtor, of a line of railroad known as the Maynard Branch extending from railroad milepost B 25.0 in Acton to the end of the line at railroad milepost B 27.71 in Maynard, a distance of 2.71 miles in Middlesex County, MA. A certificate of public convenience and necessity permitting abandonment was issued to the Boston and Maine Corporation. Since no investigation was instituted, the requirement of Section 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the FEDERAL REGISTER be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than 15 days after publication of this Notice. The offer, as filed, shall contain information required pursuant to Section 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective April 16, 1979.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-6354 Filed 3-1-79; 8:45 am]

*Originally docketed as AB-32 (Sub-No. 1F).

[7035-01-M]

[Docket No. AB-55 (Sub-No. 20F)]

SEABOARD COAST LINE RAILROAD CO.

Abandonment at Micanopy Junction and Lowell in Alachua and Marion Counties, FL; Notice of Findings

Notice is hereby given pursuant to Section 10903 of the Interstate Commerce Act (49 U.S.C. 10903) that by a Certificate and Decision decided February 8, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.-Abandonment Goshen*, 354 I.C.C. 584 (1978), and for public use as set forth in said decision, the present and future public convenience and necessity permit the abandonment by the Seaboard Coast Line Railroad Company of a portion of a line of railroad known as the Ocala Subdivision, extending from railroad milepost AS-742.59 at Micanopy Junction in Alachua County, FL, to milepost AS-756.00 near Lowell in Marion County, FL, a distance of 13.41 miles. A certificate of public convenience and necessity permitting abandonment was issued to the Seaboard Coast Line Railroad Company. Since no investigation was instituted, the requirement of Section 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the FEDERAL REGISTER be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than 15 days after publication of this Notice. The offer, as filed, shall contain information required pursuant to Section 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective April 16, 1979.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-6350 Filed 3-1-79; 8:45 am]

[7035-01-M]

[Notice No. 32]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

FEBRUARY 27, 1979.

Important notice: The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date of the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

NOTE.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

MOTOR CARRIERS OF PROPERTY

MC 126582 (Sub-4TA) (*Correction*), filed November 22, 1978, published in the FEDERAL REGISTER issue of January 15, 1979, and republished as corrected this issue. Applicant: CANOVA MOVING AND STORAGE, 1336 Woolner Avenue, Fairfield, CA 94533. Representative: Jonathan M. Lindeke, Loughran & Hegarty, 100 Bush Street, 21st Floor, San Francisco, CA 94014. *Used household goods*, restricted to the transportation of traffic having a prior or subsequent movement, in containers, to interstate and foreign destinations, beyond the points authorized and further restricted to the performance of pickup and delivery service in

connection with packing, crating and containerization or unpacking, uncrating or decontainerization of such traffic. (1) Between points in Trinity County, CA; and (2) Between points in Trinity County, CA, on the one hand, and, on the other, points in Alameda, Amador, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Plumas, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Stanislaus, Tehama, Tuolumne, Sonoma, Napa, Solano, Contra Costa, Yolo, Sacramento, Sutter, Butte, Yuba, Nevada and Placer Counties, CA, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPERS(S): Chief, Regulatory Law Office, U.S. Army Legal Services Agency, Dept. of Army (JALS-RL) Room 20455, Pentagon, Washington, D.C. 20310. SEND PROTESTS TO: A. J. Rodriguez, DS, 211 Main Street, Suite 500, San Francisco, CA 94105. The purpose of this republication is to correct the territorial description in (2) above.

MC 143775 (Sub-30TA) (Correction), filed November 6, 1978, published in the FEDERAL REGISTER issue of December 29, 1978, and republished as corrected this issue. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke (same as applicant). *General commodities* moving on bills of lading of freight forwarders as defined in Section 402(a)(5) of the Interstate Commerce Act. From points in TX, MO, and TN, to New York, NY; Patchogue, LI, NY; Scranton, Allentown, Harrisburg, and Philadelphia, PA; New Haven, CT; Worcester and Boston, MA; Binghamton and Utica, NY, Burlington, VT; Rochester and Buffalo, NY; Baltimore, MD; Washington, DC; Norfolk and Richmond, VA; and points within the commercial zones thereof, for 180 days. SUPPORTING SHIPPER: Springmeier Shipping Company, Inc., 1123 Hadley Street, St. Louis, MO 63101. SEND PROTESTS TO: Andrew V. Baylor DS, ICC, Room 2020 Federal Bldg., 230 N. First Avenue, Phoenix, AZ 85025. The purpose of this republication is to include Harrisburg, PA, as a destination point.

W-390 (Sub-9TA). By decision entered February 14, 1979, the Motor Carrier Board granted Warrior & Gulf Navigation Company, Chickasaw, AL, 180 day temporary authority commencing March 1, 1979, to operate as a water contract carrier in the transportation of wood pulp, by non-self-propelled vessels with the use of separate towing vessels, for the account of Alabama River Pulp Co., from Claiborne, AL, (Mile 69 on the Alabama River) to Mobile, AL, restricted to traffic having a prior or subsequent movement out-of-state. Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA, 15219, for applicant. Any interested person may file a petition for reconsideration within 20 days of the date of this publication. Within 20 days after the filing of such petition with the Commission, any interested person may file and serve a reply thereto.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-6392 Filed 3-1-79; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-407) 5 U.S.C. 552b(e)(3).

CONTENTS

[6320-01-M]

1

[M-198, February 27, 1979]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 2 p.m., February 27, 1979.

PLACE: Room 1011, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Negotiations with Nigeria (BIA, BPDA, OEA, BCP, OGC).

STATUS: Closed.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: The staff submitted a Memorandum to the Board on February 23, that asked the Board to vote by tally sheet. At 9:30 A.M. on Tuesday, February 27, 1979 the Board decided that it wished to discuss this item in closed session. The negotiations are scheduled to begin in Lagos on either February 28 or March 2, 1979. Accordingly, the following Members have voted that agency business requires that the Board meet on less than seven days' notice and that no earlier announcement of the meeting was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

This memo concerns strategy and positions that may be taken by the United States in negotiations with Nigeria. Public disclosures, particularly to foreign governments, of opinions, evaluations, and strategies relating to the issues could seriously compromise the ability of the United States Delegation to achieve agreements which would be in the best interest of the United States. Accordingly, the following Members have voted that the meeting on this subject would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552b(c)(9)(B) and 14 CFR Section 310b.5(9)(B) and that any meeting on this item should be closed:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

PERSONS EXPECTED TO ATTEND:

BOARD MEMBERS

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

ASSISTANTS TO BOARD MEMBERS

Mr. Sanford Rederer
Mr. David M. Kirstein
Mr. Elias Rodriguez
Mr. Stephen H. Lachter

OFFICE OF THE MANAGING DIRECTOR

Mr. John H. Hancock

BUREAU OF INTERNATIONAL AVIATION

Mr. Donald A. Farmer, Jr.
Mr. Frank S. Murphy
Mr. David Levitt
Mr. John Driscoll
Mr. Chuck Hedges

BUREAU OF PRICING AND DOMESTIC AVIATION

Mr. Michael E. Levine
Ms. Barbara A. Clark
Mr. James L. Deegan
Mr. Herbert P. Aswall
Mr. Douglas V. Leister

OFFICE OF ECONOMIC ANALYSIS

Mr. Robert Frank
Mr. Richard Klem

OFFICE OF GENERAL COUNSEL

Mr. Philip J. Bakes, Jr.
Mr. Gary J. Edles
Mr. Peter B. Schwarzkopf
Mr. Michael Schopf
Ms. Carol Light

OFFICE OF THE SECRETARY

Mrs. Phyllis T. Kaylor
Ms. Louise Patrick
Ms. Linda Senese

GENERAL COUNSEL CERTIFICATION

I certify that this meeting may be closed to the public under 5 U.S.C. 552b(c)(9)(B) and 14 CFR 310b.5(9)(B) and that the meeting may be closed to public observation.

PHIL BAKER,
General Counsel.

[S-422-79 Filed 2-28-79; 3:48 pm]

[6320-01-M]

2

[M-197, Amdt. 2; February 27, 1979]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., March 1, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

15a. Docket 33239, *et al.*, Service Across The Northern Tier. (BPDA, BLJ, OGC)
23a. United's proposal not to pay compensation for denied boarding when capacity due to inoperative emergency exists. (BPDA)

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: It is important that Item 15a be considered as early as possible so that if the Board adopts the Bureau's recommendation, the exemption authority involved can be implemented as soon as possible. Such proposed services would augment those of Northwest across the Northern Tier. Item 23a was not submitted earlier due to the absence of staff during the recent inclement weather; the Board must act on whether to suspend or not before March 1st and this order follows the precedent of recent Board orders. Accordingly, the following Members have voted that agency business requires the addition of Items 15a and 23a to the March 1, 1979 agenda and that no earlier announcement of these additions was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-423-79 Filed 2-28-79; 3:48 pm]

[6320-01-M]

3

[M-197, Amdt. 3; February 27, 1979]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., March 1, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 15. Docket 33221, Joint application of Frontier and Louisville for exemption authority in the Louisville-Kansas City Market. (BPDA, OGC.)

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Weather conditions and staff illness prevented the staff from completing a proposed revision to the memo and order. Accordingly, the following Members have voted that agency business requires the deletion of Item 15 from the March 1, 1979 agenda and that no earlier announcement of this deletion was possible:

Chairman Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-424-79 Filed 2-28-79; 3:48 pm]

[6320-01-M]

4

[M-197, Amdt. 4; February 27, 1979]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., March 1, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

19. Docket 34404, National's notice of intent to suspend service at Daytona Beach, Florida, under Section 401(j)(1). (Memo #8533, BPDA, OCCR)

21. Docket 34509; Piedmont's notice of intent to suspend service at Greenville-Spartansburg, South Carolina, under section 401(j)(1). (Memo #8534, BPDA, OCCR)

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Items 19 and 21 are being deleted because additional filings in both these matters were received which are not covered in the memoranda and draft notices. Accordingly, the following Members have voted that agency business requires the deletion of Items 19 and 21 from the March 1, 1979 agenda and that no earlier announcement of this change was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-425-79 Filed 2-28-79; 3:48 p.m.]

[6570-06-M]

5

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 AM (Eastern Time), Tuesday, March 6, 1979.

PLACE: Commission Conference Room No. 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street NW, Washington, DC. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open to the public:

1. Proposed designation of the Jacksonville (Florida) Community Relations Commission as a 706 Agency.
2. Final designation of four state or local agencies as 706 Agencies.
3. Internal procedures for handling matters brought before EEOC for coordination under Executive Order 12067.
4. Questions and Answers on Amended Sex Discrimination Guidelines and Pregnancy Discrimination Act.
5. Report on Commission operations by the Executive Director.

Closed to the public:

Litigation Authorization; General Counsel Recommendations; Matters closed to the public under the Commission's regulations at 29 CFR 1612.13.

NOTE.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6748.

This Notice Issued February 27, 1979

[S-413-79 Filed 2-28-79; 11:47 am]

[6712-01-M]

6

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, February 28, 1979.

PLACE: Room 856, 1919 M Street, N.W., Washington, D.C.

STATUS: Open Commission Meeting.

CHANGES IN THE MEETING: The following items have been deleted:

Agenda, Item No., and Subject

Safety & Special Radio Services—2—Disposition of Petitions for Rule Making.
Television—2—Application of Arkansas ETV Commission for CP for new noncommercial educational TV station on channel *6, Mountain View, Arkansas, et al.

Additional information concerning these items may be obtained from the FCC Public Information Office, telephone number 202-632-7260.

Issued: February 27, 1979.

[S-418-79 Filed 2-28-79; 2:36 pm]

[6714-01-M]

7

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 2 p.m. on Tuesday, March 6, 1979.

PLACE: Board Room, 6th Floor, FDIC Building, 550, 17th Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Disposition of minutes of previous meetings.
Memorandum and resolution proposing the revision of Part 334 of the Corporation's rules and regulations, entitled "Bank Service Arrangements" in order to implement Section 308 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978.
Staff recommendations for making publicly available the record of proceedings on Section 8(b) hearings initiated for insider abuse and consumer and civil rights issues.
Memorandum requesting Authorization of Expenditures for Advanced Course in Bank Analysis to be conducted by Cates, Lyons & Co., Inc.
Memorandum proposing the payment of a sixty percent dividend in connection with the receivership of The Peoples State Savings Bank, Auburn, Michigan.
Appeal, pursuant to the Freedom of Information Act, from the Corporation's earlier denial of a request for records.
Resolution regarding Regional Director Phillippe's Retirement.
Reports of committees and officers:
Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.
Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.
Report of the Executive Secretary regarding his transmittal of "no significiant effect" competitive factor reports.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Hoyle L. Robinson, Acting Executive Secretary, 202-389-4425.

[S-415-79 Filed 2-28-79; 2:36 p.m.]

[6714-01-M]

8

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 2:30 p.m. on Tuesday, March 6, 1979.

PLACE: Board Room, 6th Floor, FDIC Building, 550 17th Street, N.W., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Application for consent to establish a banking facility:

Suburban Trust and Savings Bank, Oak Park, Illinois, for consent to establish a banking facility at 840 South Euclid Avenue, Oak Park, Illinois.

Application for consent to establish a branch:

Provident Savings Bank, Jersey City, New Jersey, for consent to establish a branch in the Kingsway Plaza Shopping Center, Route 41 and Lenola Road, Maple Shade, New Jersey.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 43,813-L—Franklin National Bank, New York, New York

Case No. 43,820-L—First State Bank of Northern California, San Leandro, California

Case No. 43,824-L—Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico

Case No. 43,825-L—American Bank & Trust, Orangeburg, South Carolina

Memorandum re: The New Boston Bank & Trust Company, Boston, Massachusetts

Memorandum re: Surety Bank and Trust Company, Wakefield, Massachusetts

Memorandum re: Surety Bank and Trust Company, Wakefield, Massachusetts

Memorandum re: American Bank & Trust Company, New York, New York

Recommendations with respect to the initiation or termination of cease-and-desist proceedings, termination-of-insurance proceedings, or suspension or removal proceedings against certain insured banks or officers or directors thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

CONTACT PERSON FOR MORE INFORMATION:

Mr. Hoyle L. Robinson, Acting Executive Secretary, 202-389-4425

[S—416-79 Filed 2-28-79; 2:36 pm]

[6740-02-M]

9

FEBRUARY 28, 1979.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: February 28, 1979, approximately 3:30 p.m.

PLACE: 825 North Capitol St., N.E., Washington, D.C. 20426, Room 9306.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Matters concerning the agency's participation in a civil action.

CONTACT PERSON FOR FURTHER INFORMATION:

Kenneth F. Plumb, Secretary, Telephone 202-275-4166.

[S-417-79 Filed 2-28-79; 2:36 pm]

[6730-01-M]

10

FEDERAL MARITIME COMMISSION.

TIME AND DATE: March 7, 1979, 10 a.m.

PLACE: Room 12126, 1100 L Street, NW. Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public.

The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. E. Allen Brown—Request for hearing on intended denial of independent ocean freight forwarder license.

2. Agreement No. 10332—Petition of parties for clarification of chartering authority.

Portions closed to the public:

1. Docket No. 73-80: Cargo Diversion Practices at U.S. Gulf Ports by Common Carriers by Water Which Are Members of the Gulf-European Freight Association—Petition for reconsideration of Commission's order of discontinuance.

2. Docket No. 76-11: In Re Agreements 150 DR-7 and 3103 DR-7—Discussion of the record.

CONTACT PERSON FOR MORE INFORMATION:

Francis C. Hurney, Secretary, 202-523-5725.

[S-410-79 Filed 2-28-79; 10:45 am]

[6735-01-M]

11

FEBRUARY 28, 1979.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., March 2, 1979.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: This meeting will be open.

MATTER TO BE CONSIDERED:

The Commission will consider and act upon the following:

Local Union No. 5429, United Mine Workers of America v. *Consolidation Coal Co.*, MORG 79-13. (Petition for Discretionary Review)

It was determined by unanimous vote of the Commissioners that Commission business required that a meeting be held on this item and that no earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION:

Joanne Kelley, 202-653-5632.

[S-421-79 Filed 2-28-79; 3:27 pm]

[6210-01-M]

12

FEDERAL RESERVE SYSTEM. BOARD OF GOVERNORS.

TIME AND DATE: 10 a.m., Wednesday, March 7, 1979.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

SUMMARY AGENDA

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Report to the Comptroller of the Currency regarding the competitive factors involved in the proposed merger of The Sharpsburg Bank of Washington County, Sharpsburg, Maryland, with The First National Bank of Maryland, Baltimore, Maryland.

DISCUSSION AGENDA

1. Proposed regulations to implement sections of the Electronic Fund Transfer Act limiting liability for the unauthorized use of an EFT card and restricting the unsolicited distribution of such cards. (Proposed earlier for public comment; docket no. R-0193).

2. Any agenda items carried forward from a previously announced meeting.

NOTE.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and

copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: February 28, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[S-414-79 Filed 2-28-79; 2:28 pm]

[6750-01-M]

13

FEDERAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: F.R. 44, February 21, 1979, Page No. 10567.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2 p.m., Tuesday, February 27, 1979.

CHANGES IN THE AGENDA: The Federal Trade Commission has changed the time of its previously announced open meeting of Tuesday, February 27, 1979, 2:00 p.m., to 1:00 p.m.

[S-411-79 Filed 2-28-79; 10:24 am]

[6750-01-M]

14

FEDERAL TRADE COMMISSION.

TIME AND DATE: 2 p.m., Thursday, March 8, 1979.

PLACE: Room 532, (open); Room 540 (closed), Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the Public.

MATTERS TO BE CONSIDERED:

Portions open to Public:

(1) Oral Argument in Kaiser Aluminum & Chemical Corporation, Docket 9080.

Portions closed to the Public:

(2) Executive Session to Discuss Oral Argument in Kaiser Aluminum & Chemical Corporation, Docket 9080.

CONTACT PERSON FOR MORE INFORMATION:

Ira J. Furman, Office of Public Information: (2) 523-3830; Recorded Message: (202) 523-3806.

[S-412-79 Filed 2-28-79; 10:24 am]

[8010-01-M]

15

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 11164, February 27, 1979.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: February 22, 1979.

CHANGES IN MEETING: Deletion/rescheduling/additional.

The following closed item scheduled for Wednesday, February 28, 1979 at 10:00 a.m., has been rescheduled for Thursday, March 1, 1979, immediately following the open meeting at 10:00 a.m.

Institution and settlement of administrative proceedings of an enforcement nature.

The following additional items will be considered at a closed meeting scheduled for Thursday, March 1, 1979, immediately following the open meeting at 10:00 a.m.

Regulatory matter regarding financial institution.
Authorization to discuss settlement of possible enforcement action.
Institution of injunctive action.
Other litigation matter.

Chairman Williams and Commissioners Loomis, Evans, and Pollack determined that Commission business required the above changes and that no earlier notice thereof was possible.

FEBRUARY 27, 1979.

[S-419-79 Filed 2-28-79; 3:16 pm]

[8010-01-M]

16

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of March 5, 1979, in Room 825, 500 North Capitol Street, Washington, D.C.

A closed meeting will be held on Tuesday, March 6, 1979, at 10:00 a.m. An open meeting will be held on Wednesday, March 7, 1979, at 10:00 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans and Pollack determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 6, 1979, will be:

Litigation matter.
Access to investigative files by Federal, State, or Self-Regulatory Authorities.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive action.
Personnel security matter.

The subject matter of the open meeting scheduled for Wednesday, March 7, 1979, will be:

1. Consideration of an application by Rollin F. Perry to be employed by Josephthal & Company, Inc., a broker-dealer registered with the Commission, in view of a Commission Order of July 31, 1975, barring him from being associated with any broker or dealer, with the proviso that after two years, he may apply to become so associated. For further information, please contact James G. Mann at (202) 755-1663.

FOR FURTHER INFORMATION, PLEASE CONTACT:

George G. Yearsich at (202) 755-1100.

FEBRUARY 27, 1979

[S-420-79 Filed 2-28-79; 3:16 pm]

FRIDAY, MARCH 2, 1979

PART II

Federal Register

DEPARTMENT OF LABOR

Employment Standards Administration

■

MINIMUM WAGES FOR FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

[4510-27-M]

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Government Contract Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original. General Wage Determination Decision.

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Arizona:	
AZ8-5115	July 28, 1978.
AZ79-5100	Feb. 9, 1979.
Florida:	
FL79-1019	Feb. 2, 1979.
Idaho:	
ID78-5120	Sept. 8, 1978.
Nevada:	
NV78-5010	Mar. 10, 1978.
NV78-5129	Oct. 27, 1978.

SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being superseded and their dates of publication in the FEDERAL REGISTER are listed with each State.

Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

South Carolina:	
SC78-1038(SC79-1044)	Apr. 14, 1978.

CANCELLATION OF GENERAL WAGE DETERMINATION DECISION

None.

NOTICE

This is to advise all interested parties that the Department of Labor intends to withdraw 30 days from the date of this notice, Alpine County, California, from General Wage Determination No. CA78-5106 dated July 7, 1978, in 43 FR 29431, applicable to Residential Construction of single family homes and garden type apartments up to and including 4 stories.

Signed at Washington, D.C., 23rd day of February 1979.

DOROTHY P. COME,
Assistant Administrator,
Wage and Hour Division.

MODIFICATIONS P 1

DECISION #AZ78-5115 - Mod. #7
(43 FR 33018 - July 28, 1978)
Maricopa County, Arizona

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Asbestos Workers:					
Zone 1: Area lying within 15 miles radius from the City Hall in Phoenix	$12.84	82	$1.30		03
Zone 2: Area lying beyond the limits of Zone 1 and within 30 miles radius from the City Hall in Phoenix	13.44	.82	1 30		03
Zone 3: Area lying beyond the limits of Zone 2 and within 40 miles radius from the City Hall in Phoenix	13.64	.82	1 30		03
Zone 4: Area lying beyond the limits of Zone 3 and within 50 miles radius from the City Hall in Phoenix	14.09	82	1 30		.03
Zone 5: Area lying beyond the limits of Zone 4, within the union's jurisdiction	16.09	82	1 30		03
Boilermakers	14 36	1 075	1 00		.03
Electricians:					
Zone A: Beginning at the northwest corner of the Fort McDowell Indian Reservation; a line extending southward following the Reservation boundary line to intersect with a line extending along Ellsworth Road; south on Ellsworth Road to McKellips Road; a line extending east on McKellips Road to a point 1 mile east of the intersection of State Hwy. 88 and U.S. 60 & 70 near Apache Junction; southward					

MODIFICATIONS P 2

DECISION #AZ78-5115 (Cont'd):

Change (Cont'd):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Electricians (Cont'd):					
Zone A (Cont'd): to Baseline Road; west on Baseline Road to the Maricopa County Line; a line extending south on the Maricopa County Line to a point 5 miles south of Hunt Hwy; then extending straight west to a point 5 miles west of Interstate 10; then northwest on a line parallel with Interstate 10 to intersect with Pecos Road; west on Pecos Road to intersect with a line extending south on Rooks Road; north on Rooks Road a line extending straight north to intersect with a line 2 miles north of Deer Valley Road; straight east to intersect with a line extending north on 24th St; straight north to intersect with the Carefree Hwy.; east on the Carefree Hwy to Cave Creek; northeast following along Cave Creek to a point 11 miles north of Deer Valley Road; east to intersect with a line extending along Pima Road; south on Pima Road to a point 2 miles north of Deer Valley Road; straight east to the northwest corner of Fort McDowell Indian Reservation; along the northern boundary of the Reservation to the northeast corner	$13.55	96	3% + .88		3/4%

MODIFICATIONS P 3

DECISION #AZ78-5115 (Cont'd):

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change (Cont'd):					
Electricians (Cont'd):					
Zone B: That area outside of Zone A and formed by measuring 16 road miles from Pecos Road on the south; by measuring 18 road miles from the outer boundaries of the following: Powers Road to the east, from Hunt Hwy on the south to 1 mile south of Pinnacle Peak Road on the north, and 1 mile south on Pinnacle Peak Road and from Cotton Lane on the west	$15 55	.96	3% + .88		3/4%
Zone C: That area outside of Zone B and extending to the outside limits of the union's jurisdiction	16 55	.96	3% + .88		3/4%
Elevator Constructors	13 85	895	69	3% + a	03
Elevator Constructors' Helpers	9 695	895	69	3% + a	03
Elevator Constructors' Helpers (Prob)	6 925				
Glaziers	11 34	.85	.30		.01

MODIFICATION P 4

DECISION #AZ79-5100 - Mod. #1
(43 FR 8482 - February 9, 1979)
Statewide Arizona

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change:					
Asbestos Workers:					
Zone 1: Area lying within 15 miles radius from the City Hall in Phoenix or Tucson	$12 84	82	1 30		03
Zone 2: Area lying beyond the limits of Zone 1 and within 30 miles radius from the City Hall in Phoenix or Tucson	13 44	.82	1 30		03
Zone 3: Area lying beyond the limits of Zone 2 and within 40 miles radius from the City Hall in Phoenix or Tucson	13 64	82	1 30		03
Zone 4: Area lying beyond the limits of Zone 3 and within 50 miles radius from the City Hall in Phoenix or Tucson	14 09	82	1 30		03
Zone 5: Area lying beyond the limits of Zone 4, within the union's jurisdiction	16 09	82	1 30		03
Electricians:					
Flagstaff Area:					
Zone A: In the City of Flagstaff, that area lying in a square extending 20 miles north-south, east and west of the Post Office; For Williams, Winslow, Sedona, that area covering a square extending 5 miles north-south, east and west of the Post Office in each town	12 80	96	3% + 88		1/2%
Zone B: All territorial jurisdiction allotted outside of Zone A	15 35	96	3% + 88		1/2%

MODIFICATION P 5

DECISION #AZ79-5100 (Cont'd):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change (Cont'd):					
Electricians (Cont'd):					
Tucson and Yuma Area:					
Zone A: Area within 16 radius miles from the City Hall in Tucson, Yuma; Area within 16 road miles from center of town in Douglas, Nogales, Sierra Vista; Area within the boundaries of the incorporated City Limits of Parker in a northeasterly direction to Milepost No 150 located on State Hwy. 95, northeast of Parker from the Colorado River on the west, an area 1 mile wide paralleling the Colorado River:					
Electricians	$13 93	60	11%		1/2%
Cable Splicers	14 18	60	11%		1/2%
Zone B: Area from the outer limits of Zone A extending up to and including 12 road miles, excluding Douglas Area:					
Electricians	14 67	60	11%		1/2%
Cable Splicers	14.92	60	11%		1/2%
Zone C: Area from the outer limits of Zone B extending up to and including 18 road miles, excluding Douglas Area:					
Electricians	15.30	.60	11%		1/2%
Cable Splicers	15 55	.60	11%		1/2%

MODIFICATION P 6

DECISION #AZ79-5100 (Cont'd):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change (Cont'd):					
Electricians (Cont'd):					
Tucson and Yuma Area					
Zone D: Area outside of Zone C; In the Cities of Douglas, Nogales, Sierra Vista, the area outside of Zone A:					
Electricians	$16 05	60	11%		1/2%
Cable Splicers	16 30	60	11%		1/2%
Phoenix Area:					
Zone A: Beginning at the northeast corner of the Fort McDowell Indian Reservation; a line extending southward following the Reservation boundary line to intersect with a line extending along Ellsworth Road; south on Ellsworth Road to McKellips Road; a line extending east on McKellips Road to a point 1 mile east of the intersection of State Highway 88 and U.S 60 & 70 near Apache Junction; southward to Baseline Road; west on Baseline Road to the Maricopa County line; a line extending south on the Maricopa County Line to a point 5 miles south of Hunt Highway; then extending straight west to a point 5 miles west of Interstate 10; then northwest on a line parallel with Interstate 10 to intersect with Pecos Road; west on Pecos Road to intersect with a line extending south on Rooks Road; north on Rooks Road a line extending straight north to intersect with a line 2 miles north of Deer					

DECISION #AZ79-5100 (Cont'd):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change (Cont'd):					
Electricians (Cont'd):					
Phoenix Area (Cont'd):					
Zone A (Cont'd): Valley Road straight east to intersect with a line extending north on 24th St ; straight north to intersect with the Carefree Highway; east on the Carefree Highway to Cave Creek; northeast following along Cave Creek to a point 11 miles north of Deer Valley Road; east to intersect with a line extending along Pima Road; south on Pima Road to a point 2 miles north of Deer Valley Road; straight east to the northwest corner of Fort McDowell Indian Reservation; along the northern boundary of the Reservation to the northeast corner. Also, the area within 16 road miles from the City Hall in Kingman; Also, the area within 20 road miles from the City Hall in Prescott	$13 55	96	3% + 88		3/4%
Zone B: That area outside of Zone A and formed by measuring 16 road miles from Pecos Road on the south; by measuring 18 road miles from the outer boundaries of the following:					

DECISION #AZ79-5100 (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change (Cont'd:					
Electricians (Cont'd):					
Phoenix Area					
Zone B (Cont'd): Powers Road on the east, from Hunt Highway on the south to one mile south of Pinnacle Peake Road on the north and one mile south on Pinnacle Peak Road and from Cotton Lane on the West Also, from the 16th road mile extending up to and including the 32nd road mile from the City Hall in Kingman; Also, from the 20th road mile and extending up to and including the 32nd road mile from the City Hall in Prescott	$15 55	96	3% + 88		3/4%
Zone C: That area outside of Zone B and extending to the outside limits of the union jurisdiction	16 55	96	3% + 88		3/4%
Soft Floor Layers:					
Phoenix Area:					
Zone A: 0-40 miles from Court House in Phoenix and Flagstaff including Luke and Williams Air Force Bases	9 21	59	12		12
Zone B: 41-60 miles from Court House in Phoenix and Flagstaff	10 21	59	12		12
Zone C: 61 miles and over from Court House in Phoenix and Glagstaff	10 71	59	12		12

DECISION #AZ79-5100 (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Delete:					
Electricians:					
Kingman:					
Zone A: The area within the 16th road mile from the City Hall:					
Electricians	$12.04	96	1% + 70		1/2%
Cable Splicers	12 64	96	1% + 70		1/2%
Zone B: From the 16th road mile and extending up to and including the 32nd road mile:					
Electricians	14 15	96	1% + 70		1/2%
Cable Splicers	14 85	96	1% + 70		1/2%
Zone C: From the 32nd road mile and extending up to the outside limits of the union's jurisdiction:					
Electricians	15 23	96	1% + 70		1/2%
Cable Splicers	15 99	96	1% + 70		1/2%
Prescott:					
Zone A: The area within 20 road miles from the City Hall:					
Electricians	12.04	96	1% + 70		1/2%
Cable Splicers	12 64	96	1% + 70		1/2%
Zone B: From the 20th road mile extending up to and including the 32nd road mile:					
Electricians	14 15	96	1% + 70		1/2%
Cable Splicers	14 85	96	1% + 70		1/2%
Zone C: From the 32nd road mile extending to the outside limits of the union's jurisdiction:					
Electricians	15 23	96	1% + 70		1/2%
Cable Splicers	15 99	96	1% + 70		1/2%

DECISION #FL79-1019 - Mod. #1 (44 FR 6852 - February 2, 1979) Baker, Clay, Duval, Flagler, Nassau, and St Johns Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Omit:					
Baker, Clay, Flagler, Nassau, and St. Johns Counties					
Change:					
Cement Masons	$7.59				
DECISION #ID78-5120 - Mod. #6 (43 FR 40176 - September 8,1978					
Statewide Idaho					
Change:					
Elevator Constructors:					
Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties:					
Elevator Constructors	$13 95	895	69	3% + a	03
Elevator Constructors' Helpers	9.765	895	.69	3% + a	03
Elevator Constructors' Helpers (Prob)	6.975				
Remaining Counties, except Adams, Lemhi, Valley and Washington Counties:					
Elevator Constructors	11 02	.895	.69	3% + a	.03
Elevator Constructors' Helpers	7 71	895	.69	3% + a	.03
Elevator Constructors' Helpers (Prob.)	5.51				

MODIFICATIONS P 11

DECISION #NV78-5010 - Mod. #7 (43 FR 10229 - March 10, 1978) Nevada Test Site including Tonopah Test Range in Clark and Nye Counties, Nevada	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change:					
Asbestos Workers	$14 52	$1 10	$1 30		
Electricians:					
Electricians; Equipment Operators; Linemen	14 22	98	3% +1 55		05
Cable Splicers	14 55	98	3% +1 55		05
Groundman	11 58	98	3% +1 55		05
Elevator Constructors:					
Elevator Constructor	14 53	895	69	3% + a	03
Elevator Constructor Helper	10 17	895	69	3% + a	03
Elevator Constructor Helper (Prob)	7 265				
Truck Drivers:					
Group 1	10 98	48	1 12		
Group 2	11 09	48	1 12		
Group 3	11 14	48	1 12		
Group 4	11 30	48	1 12		
Group 5	11 48	.48	1 12		
DECISION #NV78-5129 - Mod. #4 (43 FR 50344 - October 27, 1978 Washoe County, Nevada					
Change:					
Bricklayers; Stonemasons:	$12.60	95	60		01
Marble Masons	11 85	95	60		.01
Terrazzo Workers; Tile Setters	11 85	95	60		01

SUPERSEDEAS DECISION

STATE: South Carolina COUNTY: Darlington
DECISION NUMBER: SC79-1044 DATE: Date of Publication
Supersedes Decision No : SC78-1038 dated April 14, 1978 in 43 FR 16108
DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ASBESTOS WORKERS	$6.85				
BOILERMAKERS	9.11				
BRICKLAYERS	5.47				
CARPENTERS	4.98				
CEMENT MASONS	4.50				
ELECTRICIANS	6.72				
GLAZIERS	4.50				
IRONWORKERS	7 00				
LABORERS	3.12				
LATHERS	7.12				
MILLWRIGHTS	7.00				
PLASTERERS	4.75				
PLUMBERS & Steamfitters	7 00				
SHEET METAL WORKERS	6 97				
SOFT FLOOR LAYERS	6.25				
SPRINKLER FITTERS	6.83				
TILE SETTERS	5.00				
TRUCK DRIVERS	3.12				
WELDERS - Rate for craft.					
POWER EQUIPMENT OPERATORS:					
Backhoes	3.35				
Cranes, derricks, & draglines	6.12				
Trenching machines	3.88				

[FR Doc 79-5903 Filed 3-1-79; 8:45 am]

Federal Register

FRIDAY, MARCH 2, 1979

PART III

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

■

GRAIN STANDARDS

[3410-02-M]

DEPARTMENT OF AGRICULURE

Federal Grain Inspection Service

[7 CFR Parts 800, 802, 803]

GRAIN STANDARDS

Proposed Rulemaking

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Proposed Rulemaking.

SUMMARY: The Federal Grain Inspection Service (FGIS) proposes regulations to implement the U.S. Grain Standards Act, as amended in 1976 and 1977. Among other provisions, this document sets forth official inspection and weighing requirements; methods and procedures, appeal inspection services and equipment testing; performance requirements for grain inspection equipment and grainhandling equipment and related systems. The implementation of the amendments of the Act is largely dependent on the promulgation of new or revised regulations. Interested persons are invited to submit written comments on the provisions contained in the text of the proposed regulations.

DATES: Written comments on the text of proposed regulations should be submitted by May 1, 1979.

ADDRESS: Written comments or requests for additional copies of the text should be sent in duplicate to the Compliance Division, Room 2405 Auditors Building, 1400 Independence Ave., S.W., Washington, D.C. 20250, where they will be available for public inspection during normal business hours. An approved Draft Impact Analysis is also available from Compliance Division.

FOR FURTHER INFORMATION CONTACT:

Leslie E. Malone, Assistant Deputy Administrator, Program Operations (Staff), USDA, FGIS, Room 1627-S, 1400 Independence Ave., S.W., Washington, D.C. 20250, telephone (202) 447-9166.

SUPPLEMENTARY INFORMATION: The U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*) hereafter referred to as "Act," was amended in 1976 (Pub. L. 94-582) and in 1977 (Pub. L. 95-113). The Act was amended to provide the following:

- Establishment of the Federal Grain Inspection Service (Service).
- Mandatory official inspection and weighting of export grain.
- Mandatory official weighing of other grain at export elevators at export port locations.
- Supervision by the Service of all official inspection and weighing activities.
- Performance by the Service of official inspection and weighing services at export ports and certain other locations.
- Delegation of authority by the Service to certain States to perform official inspection and weighing services at certain export port locations.
- Designation by the Service to agencies to perform official inspection and weighing services at inland locations.
- Triennial termination of designations.
- Permissive official weighing of bulk grain other than at export elevators at export port locations.
- Criteria for determining whether an elevator is eligible te receive official weighing services.
- Testing of equipment used in performing official inspection and weighing services under the Act.
- Licensing of individuals to perform official weighing and related services.
- Triennial termination of licenses.
- Establishment of standards for the recruiting, training, and supervision of official inspection personnel and work production standards for such personnel.
- Refusal of official inspection and weighing services.
- Assessment of civil penalties for certain violations.
- Prohibition of certain conflicts of interest by grain businesses, stockholders of grain businesses, and related entities.
- Retention of records by certain elevators and merchandisers.
- Prohibition with respect to falsely stating the weight of grain.
- Prohibition with respect to preventing any interested person from observing the loading, weighing, sampling, or inspection of grain.
- Increase in criminal penalties for violations of the Act.
- Authority to prescribe conditions for obtaining official inspection or weighing services.
- Registration of certain persons who export grain or who handle, weigh or transport grain.

The implementation of the amendments of the Act is largely dependent on the promulgation of new or revised regulations. Proposed regulations have been prepared by the Service. Included in the proposed Part 800 regulations are provisions contained in the current Subpart A of the Part 26 regulations (7 CFR Part 26). Also included are new Parts 802 (Subpart C)—Official Performance Requirements for Grain Inspection Equipment and Part 803 (Subpart D)—Official Performance Requirements for Grain Weighing Equipment and Related Grain Handling Systems.

The regulations are being prepared and renumbered as Parts 800-809 of the Code of Federal Regulations (7 CFR Part 800-809). The identification of the Parts in Chapter VIII follows:

- Part 800 (Subpart A)—Regulations under the U.S. Grain Standards Act (now 7 CFR, Part 26).
- Part 801 (Subpart B)—Official U.S. Standards for Grain (now 7 CFR, Part 26, Subpart B).
- Part 802 (Subpart C)—Official Performance Requirements for Grain Inspection Equipment (new).
- Part 803 (Subpart D)—Official Performance Requirements for Grain Weighing Equipment and Related Grain Handling Systems (new).
- Part 804 (Subpart E)—Official Standards for the Recruiting, Training, and Supervision of Official Personnel and Work Production Standards for Such Personnel (new).
- Parts 805-807 (Subparts F, G, and H)—are reserved for use under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*).
- Part 808 (Subpart I)—Rules of Practice Governing Informal Proceedings under the U.S. Grain Standards Act.
- Part 809 (Subpart J)—Safety (new).

Statement of Considerations

The Service published in the Federal Register (43 FR 33612-33643) on Monday, July 31, 1978, a summary of the study draft to update the Subpart A (Part 800) regulations under the Act. The notice also informed interested parties that they could request copies of the study draft and requested interested parties to submit written comments on the summary or study draft by September 29, 1978. In response to requests from interested parties for additional time to file comments because of the nature and length of the summary and study draft, the comment period was extended to October 29, 1978, and notice was published in the Federal Register (43 FR 33641-33642) Friday, August 18, 1978. At that time, it was concluded that Subpart C (Part 802), the Official Performance Requirements for Grain Inspection Equipment, and Subpart D, (Part 803) the Official Performance Requirements for Grain Weighing Equipment and Related Grain Handling Systems, should be included in the summary. Accordingly, a summary of the Subparts C and D was included in the August 18 notice of extended comment period.

Following the publication of the summary of Subparts A, C, and D, representatives of the Service conducted informal meetings at Washington, D.C.; New Orleans, Lousiana; Houston, Texas; Portland, Oregon; Chicago, Illinois; and Kansas City, Missouri, to explain the provisions in the study draft and the summary.

Service representatives also met with the U.S. Grain Standards Act Advisory Committee to discuss and solicit recommendations on the provisions of the summary and study draft. In addition, Service representatives conducted other meetings at the request of interested groups to discuss the summary and study draft of the regulations.

In response to the July 31 and August 18 notices published in the Federal Register, 178 comments re-

garding the provisions of the summary and study draft were filed with the Hearing Clerk during the comment period.

The Service began cataloging comments as they were received; and following the close of the comment period on Ocober 29, 1978, the Service began its review preparatory to redrafting the Subparts A, C, and D of the regulations before publication as proposed rulemaking. In its review, the Service gave full consideration to the 178 written comments filed with the Hearing Clerk, the recommendations of the U.S. Grain Standards Act Advisory Committee, discussion of the significant issues at the informal meetings across the United States, and information submitted at other meetings with industry and interested groups. In its deliberation, the Service gave consideration to the legislative history of the amended Act, requirements imposed by other Federal laws, the economic importance of U.S. export grain to the balance of payments, and the established marketing procedures for export and domestic grain.

The 178 written comments filed with the Hearing Clerk ranged in length from 1 page to 90 pages. A detailed analysis of each comment on a section-by-section basis is not considered practicable here. The comments ranged in substance from editorial suggestions to deletions of provisions mandated by the Act. (Note: The written comments filed are available for public inspection during the regular business hours at the Office of the Hearing Clerk or the Compliance Division, FGIS.) Following is a numerical listing of the provisions which a large number of commenters addressed and the decision the Service reached regarding each issue after careful review.

1. Section 800.6 *Procedure for prescribing, Amending, or Revoking Regulations.* Some comments indicated disagreement with the provision of § 800.6 which set out the rulemaking procedures to be followed by the Service. The Service has little latitude in the rulemaking process, because the procedures to be followed are specifically prescribed under the Administrative Procedures Act (5 U.S.C. 551 *et seq.*), and other requirements are provided in Section 4 of the Act. Section 800.6 has been rewritten to indicate that the Service will, in the rulemaking process, follow those prescribed procedures set out in the Administrative Procedures Act and Section 4 of the Act.

2. Section 800.16(a) *Designation of Export Elevator.* Many commenters indicated that the study draft of the regulations was too restrictive in its requirements on small exporters, particularly those engaged in bagging operations and rail, truck, and containerized shipments from domestic locations into export. The Service has, for some time, been aware of the impact that the mandatory inspection and weighing requirements have on elevators which ship only a nominal amount of grain into export and those which ship export grain on an irregular basis. After its review, the Service has adopted the recommendation of the Advisory Committee and redefined export elevator (§ 800.16(a)) to be an elevator which exports a minimum of 15,000 metric tons in a calendar year, or has exported such amount the previous calendar year. The impact of this decision is that any elevator may ship up to 15,000 metric tons of grain into export in a calendar year and be exempt from the mandatory inspection and weighing requirements if it did not export 15,000 metric tons the previous year. However, if such elevator requests official inspection or weighing services with regard to those shipments, then the elevator must meet all the requirements for obtaining those official services.

3. Section 800.29 *Recordkeeping by Grain Firms.* A large number of comments opposed the recordkeeping provisions which apply to grain elevators and handling facilities. Those opposing the recordkeeping provisions indicated that the provisions placed an undue burden on small country elevators and, further, was an intrusion into private business. The Service recognizes that elevators should be required to maintain only those records necessary for the effective implementation of the recordkeeping provisions under the Act. Therefore, after reviewing the comments and considering the objectives of the Act, the Service has rewritten Unit IV containing the recordkeeping provisions. Until some future needs warrant additional provisions, the Service will require that domestic elevators and export elevators at export port locations maintain only records of receipts and shipments of grain and all other records for receipts and shipments that are maintained by the elevator in the normal course of good business practices. Such records will be required only if an elevator obtains official inspection or weighing and will be maintained for a minimum of 3 years. Elevators are to continue to maintain such other records as are presently kept by the elevator or facility under current operating procedures and will make those records available to the Service on request. This will not prevent elevators from revising their current recordkeeping procedures.

4. Sections 800.30-800.44 *Registration.* In the study draft, the Service proposed to exempt from registration those export elevators that exported less than 1,000 metric tons of grain in a calendar year. Four comments, including the comment from the Advisory Committee, suggested that the exemption for registration of export firms should be similar to the metric ton exemption related to the required inspection and weighing of export grain. The 1,000-metric ton exemption was considered too low by many commenters to be effective. The Service agrees that there should be a correlation between the volume exemption for required export inspection and weighing and for registration of export firms. The Service is now proposing to use a 15,000-metric ton figure to effect an exemption from registration for export firms.

5. Section 800.45(d) *Availability of Official Service.* A number of comments suggested that official services should be available as required by the Act at any time or place on request of an applicant. Section 800.45(d) of the proposed regulations does provide that reinspection and appeal inspection services will be available upon request of an interested person, "insofar as practicable." The comments suggested that the phrase "insofar as practicable" gave the Service latitude in providing official services. The Service agrees. However, it must be recognized that events may arise which would not allow the providing of official services; e.g., strikes, national emergencies, or Acts of God. Because of those possibilities, the Service believes that the phrase "insofar as practicable" should remain in the regulations as it pertains to the providing of official services.

6. Section 800.46 *Requirements for Obtaining Official Services—Access to Grain.* Comments received regarding the requirements for obtaining official services indicated that in § 800.46(b)(1) the Service should provide the equipment or assistance to its personnel to make grain accessible by opening barge hatch covers. Also in § 800.46(b)(4) the comments suggested that safety should not be a condition for withholding services because the Office of Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) were responsible for those requirements. The Service recognizes that in certain instances an applicant may not have control of a carrier such as a barge of grain. However, the Service does consider it the responsibility of an applicant to make grain fully accessible, including arrangements to open hatches on barges to inspection personnel in order to obtain official inspection. Therefore, no changes were made in this provision.

In the area of safety for official personnel, the Service recognizes the OSHA and EPA requirements and con-

trol in the area of safety. It also recognizes that the Service and official agencies have primary responsibilities for safety of their personnel in the performance of duties related to inspection and weighing activities. The Service also is preparing to draft and publish a Part 809 (Subpart J). This Part 809 will set out the safety requirements for official personnel, which will be consistent with OSHA regulations. Until the Part 809 is completed and published, the Service believes the safety provisions with regard to loading and unloading conditions should remain in the Part 800 (Subpart A) regulations. No change is contemplated at the present time in this provision.

7. Sections 800.60-800.69 *Deceptive Practices.* Included in the summary of the regulations as Unit VIII is a list of examples describing circumstances which would constitute certain deceptive practices. The examples were intended to be used by field personnel as guidelines in determining when a deceptive practice had been committed and would be helpful as guidelines to all interested parties. Several comments objected to the inclusion of those examples in the regulations and suggested that such detail would more properly be placed in an instruction. The Service believes that the showing in the regulations of those acts which would constitute a deceptive practice would be helful to field personnel and all interested parties. The Service does agree that the unit should be revised to delete unnecessary wording and to identify the items as specific violations. The unit has been redrafted with this thought in mind.

8. Section 800.70(a) *Evaluation of Fees and Charges.* Commenters suggested that the Service should evaluate and adjust its fees as needed to maintain a fee schedule in line with the costs of providing inspection and weighing services. The Service agrees with those comments and published on December 3, 1978, a revised fee schedule which reduces certain inspection and weighing charges. The Service is continuing to evaluate its fees and charges and expects to complete evaluation of other inspection and weighing costs by March 1979. Further revisions may be made in the fee schedule dependent on the results of the evaluation.

9. Section 800.71 *Schedule of Service Fees and Charges.* Other comments from the Grain Elevator and Processing Society, the North American Export Grain Association, and the Advisory Committee suggested that the Service's schedule of fees and charges need not be published as part of the draft regulations. The Service agrees, based on the consideration that the Service's fees and charges were published in the December 8, 1977, FEDERAL REGISTER and were further revised by publication in the December 3, 1978, FEDERAL REGISTER. The Service's schedule of fees and charges will continue to be published in the FEDERAL REGISTER with each amendment of the schedule, but it will not be included in these proposed draft regulations to avoid duplicate publication.

10. Sections 800.76(f)(1) and 800.77(f)(1) *Performance of Stowage Examination Shown on Inspection or Weighing Certificate.* Several comments indicated that the provision for showing on an inspection certificate whether a stowage examination had been performed on the carrier containing a lot of grain was not needed. The Service believes that it is needed but plans to include it as part of the instructions for official certificates rather than include it as part of the regulations.

11. Section 800.84 *Sampling Requirements.* In the study draft, the Service proposed that all export lots of grain and all "OUT" waterborne shipments of grain be sampled by means of a diverter-type (D/T) mechanical sampler. Comments on these subparagraphs suggested that the Service allow a condition inspection by means of probe sampling, because there are occasions when an applicant needs to verify that after loading the condition of a lot of grain has not changed. The Service agrees that a condition inspection basis probe sampling is needed and has made such provision in these subparagraphs. The initial provision requiring D/T mechanical sampling for export and "OUT" waterborne lots is unchanged; however, 6 months additional time has been allowed for approval and installation of D/T mechanical samplers where required.

12. Section 800.87(f)(1) *Weevily Shiplot Grain.* Under present regulations, an applicant has several options regarding a material portion of weevily grain loaded aboard a ship. The applicant may accept a separate "weevily" certificate for the material portion, or unload the weevily portion, or fumigate the weevily portion loaded aboard a bulk carrier under certain procedures and receive a weevil-free certificate for the lot; or if loaded aboard a ship other than a bulk carrier (e.g., tanker or 'tween decker), fumigate the weevily portion subject to subsequent examination for infestation and receive a certificate based on the results of that examination.

In the study draft, it was proposed that if an applicant elected to unload a material portion of weevily grain, then all grain in common stowage with the weevily portion would be required to be unloaded. The intent of this provision was to assure that all grain that was commingled with the weevily portion would be removed from the ship. Insects possess the ability to freely move through all grain in a shiphold, and the time to remove the infested grain from the shiphold varies depending on the amount of grain infested and the method of removal. For these reasons, insects could infiltrate an entire shiphold of grain. Comments received regarding this provision indicated that the requirement was too restrictive and harsh and would result in increased costs due to unloading much more grain than was necessary. After reviewing the comments and evaluating the effects of this provision, FGIS has decided to develop criteria for such unloading depending on the circumstances and type of vessel in each case. Because of the amount of detail needed, it has been determined that the details of those requirements will be covered in instructions developed by the Service.

13. Sections 800.126(d) and 800.136(d) *Advance Request for Reinspection, Appeal Inspection, or Review of Weighing.* A large number of comments opposed the provision which would not allow a request for a reinspection, appeal, or review of weighing until after receiving the results of the original inspection or weighing. The Service believes that many requests for a reinspection or appeal inspection are the result of tradition, historical contract requirements, or the desire of an applicant to obtain a USDA certificate. The Service has the same interest as grain industry firms in eliminating needless duplication of inspection and weighing costs and will continue to encourage that applicants for service obtain only such additional inspections or weighings which are needed to effectively market their grain. The Service does recognize that there are valid reasons why an applicant may need to make an advance request for service. For this reason, the Service decided it will not prohibit advance requests for service.

14. Section 800.161(b)(13) *Carrier Identification on Submitted Sample Certificates.* A majority of the comments received were opposed to the restriction which would prevent the showing of carrier identification on submitted sample certificates. The Service intended to use this prohibition to prevent certain grade shipping abuses and maintain the possibility that receivers of such certificates may be misled as to what the certificates represent; i.e., the submitted sample certificate represents only the grain in the sample submitted for inspection and not a container or lot of grain. A study of marketing procedures indicates that trading in grain in several major domestic markets is handled through use of the submitted sample certificate containing carrier identifi-

cation. It appears that prohibiting the use of carrier identification on submitted sample certificates would disrupt established marketing practices at major domestic markets. Based on a review of the information developed and the comments received, including the recommendation of the Advisory Committee, the Service plans to continue to allow the showing of carrier identification on submitted sample caertificates but will revise the certificates so that receivers of submitted sample certificates will clearly understand what the certificates represent.

15. *Corn Loaded by Mechanical Trimmers or Spouted Against the Bulkhead of a Ship.* In the study draft, the Service proposed that export certificates for shiplots of corn which were loaded by means of a mechanical trimmer or were spouted against a metal bulkhead during loading would contain a statement indicating that the quality or condition of the corn may have changed as a result of the method of loading. Comments received regarding this provision indicated that qualifying the export certificate in the manner proposed would affect the "certificate final" status of official export certificates and directly affect the orderly marketing of export grain. The comments further indicated that in many instances the shipper does not have control of the persons or firms loading the corn aboard a vessel. After reviewing the comments and other available information, the Service has decided to delete this provision at this time until further tests and research can be conducted to determine what effects certain export loading equipment and methods have on grain loaded aboard a vessel.

16. Section 800.165 *Correction of Certificate After Issuance.* Several comments were opposed to the provision which allowed official certificates to be corrected after issuance with no time limitations, because allegedly this provision would destroy the "certificate final" quality of official certificates. The comments sugested that some specific time period should be provided so that orderly marketing practices may be maintained. The Service agrees that buyers and sellers of grain should have a definite time cutoff with regard to correcting errors in official certificates in order to trade effectively. The Service is now proposing a 1-year time limit for correcting errors on official certificates.

17. Section 800.173 *Examinations and Reexaminations for FGIS Personnel.* Several comments indicated that Service personnel and licensees employed by official agencies should be given the same examination and reexamination for competency to perform official functions. The Service recognizes the practicality of the suggestions. However, the Service is governed in this area by the Civil Service requirements for Federal personnel. Such requirements restrict the amount and kind of test which can be administered to Federal personnel for promotion or reexamination for proficiency. For these reasons, testing procedures for Federal personnel is being addressed but not in these regulations.

18. Section 800.208 *Approved Personnel.* A majority of the comments were opposed to the concept of approved personnel, the concept being that the Service would approve all non-Service personnel involved in the official weighing and scale testing processes. The rationale of the commenters was that such personnel would be elevator employees and the Service should not be issuing direct instructions to those persons. The Service has determined that only weighers and scale testing organizations are to be approved. The requirement to approve weighing technicians and scale testers has been deleted from the draft of the regulations, and the responsibility for the duties performed by those persons will be placed on the management of the employing firm. Elevator employees who weigh will be approved and will receive minimal instructions from the Service to assure that they are complying with the provisions of the Act and regulations.

19. Sections 800.1000-800.1013 *Performance Requirements for Grain Weighing Equipment and Related Grain Handling Systems.* Comments received regarding the performance requirements for official weighing equipment generally recommended that the requirements of the "Specifications, Tolerances, and other Technical Requirements for Commercial Weighing and Measuring Devices" adopted by the National Conference on Weights and Measures and published by the U.S. Department of Commerce, National Bureau of Standards, as Handbook (HB) 44 be adopted and implemented with regard to grain scales. The major concern in the comments was the difference in tolerances and minimum graduation sizes between HB 44 with the two exceptions noted above. The tolerances and minimum graduation sizes proposed by the Service are a compromise between the requirements of HB 44 and the more rigid requirements of some State organizations. In developing our proposed requirements for grain weighing equipment, the Service considered many factors in the grain weighing program throughout the United States. Among the factors considered were the following: (1) The amended Act of 1976 gave the Service a unique responsibility compared to other scale regulatory bodies; e.g., the Service must certify the accuracy of grain scales and also certify the weight of grain officially weighed over such scales; (2) The tolerances listed in HB 44 are not law; rather, they are tolerances recommended by the National Conference on Weights and Measures and are not uniformly applied because different regulatory bodies implement the tolerance requirements at different locations throughout the United States; (3) Unlike commercial scales, grain scales are used almost exclusively for weighing grain, and many such scales are designed specifically to weigh grain; (4) In total dollar value, the amount of grain passing through grain scales is unequaled by any other commodity sold on the basis of weight; (5) Grain scales historically have been tested to more stringent tolerances than commercial scales; and (6) The Scale Manufacturing Association has assured the Service that present grain scales used for official weighing of grain under the Act meet the requirements proposed in these regulations.

The Service also considered the increasing importance of grain as an export commodity from the United States. With the export of grain in mind, it is reasonable to assume that the long-range goal for grain weighing in the United States should be aimed toward the various requirements of the international weights and measures community represented as Organization Internationale de Metrologic Legale, and with which organization the United States began its membership in 1973. The Service believes the proposed requirements for grain weighing equipment are a good compromise with the different philosophy and approach of the international weights and measures organization and the various requirements presently applied under HB 44. These proposed requirements also are within the present capabilities of scale manufacturing. After giving consideration to the comments submitted and to all other information available, the Service believes the proposed requirements should be uniformly implemented.

The preceding items are considered significant by the Service because of the number and content of the comments received regarding each item. Numerous other changes were incorporated into the text in response to the comments but are not itemized here because it is not considered practicable to do so.

Following is the complete text of Parts 800, 802, and 803 (Subparts A, C, and D) regulations as they are being proposed. Comments by interested parties are invited on these proposed parts in order that the Service may further evaluate them. All comments received will be reviewed and evaluated by the Service before Parts 800,

802, and 803 are published as final rulemaking.

It is proposed to amend 7 CFR by establishing a new "Chapter VIII, Federal Grain Inspection Service, Department of Agriculture" and adding Parts 800, 802, and 803 to read as follows:

PART 800—REGULATIONS

DEFINITIONS

Sec.
800.0 Terms defined in the Act.
800.1 Meaning of terms.

ADMINISTRATION

800.2 Objectives of the Act.
800.3 Nondiscrimination—policy and provisions.
800.4 Filing petitions for administrative actions.
800.5 Filing complaints and reports of alleged violations.
800.6 Procedures for establishing regulations, grain standards, official criteria, performance requirements for equipment, and rules of practice.
800.7 Provisions governing the rules of practice.
800.8 Publication of regulations, grain standards, performance requirements for equipment, and rules of practice.
800.9 General waiver authority
800.10 Information about the Service, the Act, and the regulations.
800.11-800.14 [Reserved]

OFFICIAL INSPECTION AND OFFICIAL WEIGHING REQUIREMENTS

800.15 Who is responsible for achieving compliance with the official inspection and official Class X weighing requirements.
800.16 Determinations, "export elevator" and "export port location".
800.17 Certification requirements for export grain.
800.18 Special inspecton and weghing requirements for sacked export grain.
800.19 Waivers of the official inspection and official Class X weighing requirements.
800.20-800.24 [reserved]

REGISTRATION

RECORDKEEPING AND ACCESS TO FACILITIES

800.25 Elevator and merchandising records required to be kept.
800.26 Access to records and facilities.
800.27-800.29 [Reserved]
800.30 Meaning of terms.
800.31 Who must register.
800.32 When to register.
800.33 How to register.
800.34 Registration fees.
800.35 Review of applications.
800.36 Issuance and possession of certificates of registration.
800.37 Notice of change in information.
800.38 Termination of certificate of registration.
800.39 Suspension or revocation of certificates of registration for cause.
800.40 Surrender of certificate of registration.
800.41-800.44 [Reserved]

CONDITIONS FOR OBTAINING OR WITHHOLDING OFFICIAL SERVICES

800.45 Availability of official services.
800.46 Requirements for obtaining official services.
800.47 Withdrawal of requests for official services.
800.48 Dismissal of request for official services.
800.49 Conditional withholding of official services.
800.50 Refusal of official services.
800.51 Official services not to be denied.
800.52-800.54 [Reserved]

RESTRICTIONS ON REPRESENTATIONS

800.55 Restrictions with respect to descriptions of grain by grade.
800.56 Restrictions with respect to official forms.
800.57 Restrictions with respect to official marks.
800.58-800.59 [Reserved]

DECEPTIVE PRACTICES

800.60 Deceptive actions and practices.
800.61 Sampling and inspection.
800.62 Weighing.
800.63 Inspection and weighing.
800.64-800.69 [Reserved]

FEES

800.70 Fees for official services performed by agencies.
800.71 Fees for official services performed by the Service.
800.72 Explanation of Service fees and additional fees.
800.73 Computation and payment of Service fees; general fee information.
800.74 [Reserved]

KINDS OF OFFICIAL SERVICES

800.75 Kinds of official services; general.
800.76 Kinds of official inspection services.
800.77 Kinds of official weighing services.
800.78 Prohibited services; restricted services.
800.79 [Reserved]

INSPECTION METHODS AND PROCEDURES

800.80 Objective of inspection services.
800.81 Methods and order of performing official inspection services.
800.82 Sample requirements; general.
800.83 Sampling provisions by level of service.
800.84 Sampling provisions by kind of movement.
800.85 Inspection of bulk grain in land carriers and barges in single lots.
800.86 Inspection of grain in combined lots.
800.87 Inspection of shiplot grain in single lots.
800.88 New inspection.
800.89 When identiy of grain or container is considered lost.
800.90-800.94 [Reserved]

WEIGHING PROVISIONS AND PROCEDURES

800.95 Objective of weighing services.
800.96 Methods and order of performing official weighing services.
800.97 Weighing procedures.
800.98 Weighing of bulk grain in land carriers and barges in single lots.
800.99 Weighing of grain in combined lots.
800.100 Weighing of shiplot grain in single lots.
800.101 Official weight sample provisions for checkweighing sacked grain.
800.102 Checkweighing sampling provisions by level of service.
800.103 Checkweighing sampling provisions by kind of movement.
800.104 Restricted weighing activities.
800.105-800.114 [Reserved]

ORIGINAL SERVICES

800.115 Who may request original services.
800.116 How to request original services.
800.117 Dismissal of requests for original services.
800.118 Who shall perform original services.
800.119 Issuance and distribution of original service certificates.
800.120-800.124 [Reserved]

REINSPECTION SERVICES AND REVIEW OF WEIGHING SERVICES

800.125 Who may request reinspection services or review of weighing services.
800.126 How to request reinspection services or review of weighing services.
800.127 When a request for reinspection services or review of weighing services shall be dismissed.
800.128 Who shall perform reinspection services or review of weighing services.
800.129 Provisions governing reinspection and review of weighing services.
800.130 Issuance and distribution of reinspection certificates.
800.131 Reporting results of review of weighing services.
800.132-800.134 [Reserved]

APPEAL INSPECTION SERVICES

800.135 Who may request appeal inspection services.
800.136 How to request appeal inspection services.
800.137 When a request for appeal inspection service shall be dismissed.
800.138 Who shall perform appeal inspection services.
800.139 Provisions governing appeal inspection services.
800.140 Issuance and distribution of appeal inspection service certificates.
800.141-800.144 [Reserved]

OFFICIAL RECORDS AND FORMS (GENERAL)

800.145 Official records that are required to be kept.
800.146 Retention periods for official records.
800.147 Availability of official records.
800.148 Records on the Act, regulations, standards, and instructions issued by the Service under the Act.
800.149 Records on delegations, designations, contracts, and approvals of scale testing organizations.
800.150 Records on organization, staffing, and budget.
800.151 Records on licenses, authorizations, and approvals.
800.152 Records on fee schedules.
800.153 Records on space and equipment.
800.154 Records on official inspection, weighing, equipment testing, and monitoring functions.
800.155 Related official records.
800.156-800.159 [Reserved]

OFFICIAL CERTIFICATES

800.160 Official certificates; issuance and distribution.
800.161 Official certificates; general requirements.
800.162 Certificates of grade; special requirements.
800.163 Divided-lot certificates.
800.164 Duplicate certificates.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867; Pub. L. 95-113, 91 Stat. 1024 (7 U.S.C. 71 et seq.).

DEFINITIONS

§ 800.0 Terms defined in the Act.

For definitions of the following terms, see sections 3, 11, and 17A of the Act (7 U.S.C. 75, 87, 87f-1).

Term and Subsection	
Administrator	3(z)
control relationship	17A(b)(2)
deceptive loading, handling, weighing, or sampling	3(u)
Department of Agriculture	3(b)
export elevator	3(v)
export grain	3(h)
export port location	3(w)
false, incorrect, and misleading	3(t)
grain	3(g)
interested person	3(r)
interstate or foreign commerce	3(f)
lot	3(q)
official agency	3(m)
official certificate	3(n)
official form	3(n)
official grade designation	3(l)
official inspection	3(l)
official inspection personnel	3(j)
official mark	3(k)
official sample	3(o)
official sampling	3(o)
official weighing	3(x)
officially inspected	3(l)
officially weigh	3(x)
officially weighed	3(x)
person	3(c)
Secretary	3(a)
Service	3(aa)
ship	3(s)
State	3(e)
submitted sample	3(p)
supervision of weighing	3(y)
United States	3(d)
use of official inspection service	11(b)(3)

§ 800.1 Meaning of terms.

(a) *Construction.* Words used in the singular form in this Part shall be deemed to import the plural, and vice versa, as appropriate. When a section; e.g., § 800.2, is cited in this Part, it refers to the indicated section in this Part.

(b) *Definitions.* For the purpose of this Part, unless the context requires otherwise, the following terms shall be construed, respectively, to have the meanings given for them below. For ease in use, the terms are shown in alphabetical order. For additional definitions see §§ 800.25, 800.30, 800.60, 800.80, 800.95; also Parts 802 and 803 of this Chapter.

(1) *Act.* The United States Grain Standards Act, as amended (39 Stat. 482-485, as amended 7 U.S.C. 71 *et seq.*).

(2) *Agency.* A delegated agency or a designated agency, as appropriate.

(3) *Applicant.* An interested person who requests an official inspection service or an official Class X or Class Y weighing service, and is assessed the fee, if any, for the service.

(4) *Approved scale testing organization.* A State or local govenmental agency, or person, approved by the Service to perform all or specified official equipment testing functions with respect to weighing equipment.

(5) *Approved weigher.* A person who is employed by, at, or in a weighing facility and approved by the Service to physically perform or supervise the performance of all or specified official Class X or Class Y weighing functions.

(6) *Approved weighing equipment.* Any weighing device and related equipment that is approved by the Service for the performance of official Class X or Class Y weighing functions.

(7) *Approved weighing facility.* An elevator, warehouse, or other storage or handling facility that is approved by the Service for the performance of official Class X or Class Y weighing functions.

(8) *Assigned area of responsibility.* A geographical portion of the United States assigned under the regulations to an agency, or to a field office, for the conduct of all or specified official inspection functions or official Class X or Class Y weighing functions. An assigned area contains one or more specified service points.

(9) *Board appeal inspection service.* An official review performed, upon request, by the Board of Appeals and Review of the results of a field appeal inspection service.

(10) *Board of Appeals and Review.* The Board of Appeals and Review of the Service.

(11) *Business day.* A regular workday, 6:00 a.m. to 6:00 p.m. local time, or the hours established in the approved fee schedule by an agency.

(12) *Cargo shipment.* Bulk or sacked grain that is loaded directly aboard a waterborne carrier for shipment in commerce. Grain loaded aboard a land carrier for shipment aboard a waterborne carrier shall not be deemed to be a cargo shipment.

(13) *Carrier.* A container used in transporting bulk or sacked grain.

(14) *Circuit.* A geographical portion of the United States assigned to a field office. (A circuit includes one or more assigned areas of responsibility.)

(15) *Container.* A truck, trailer, truck/trailer combination, railroad car, barge, ship, or other carrier; or a bin, other storage space, bag, box, or other receptacle for grain.

(16) *Contractor.* A person who enters into a contract with the Service for the performance of specified official inspection functions, official Class X or Class Y weighing functions, or official monitoring functions.

(17) *Date of official inspection function or official Class X or Class Y weighing function.* The day on which an official inspection function or an official Class X or Class Y weighing

function is completed, as shown in the detailed work records specified in § 800.154. For certification purposes, a day shall be deemed in all cases to end at midnight, local time.

(18) *Delegated agency.* A State agency delegated authority under the Act to perform official inspection functions and official Class X or Class Y weighing functions at one or more export port locations in the State.

(19) *Department.* The United States Department of Agriculture.

(20) *Designated agency.* A State or local governmental agency, or person designated by the Service to perform all or specified official inspection functions or official Class X or Class Y weighing functions at locations other than export port locations.

(21) *Elevator.* Any elevator, and any grain warehouse, storage, or handling facility used primarily for receiving, storing, and shipping grain. Grain warehouse, storage, and handling facilities that are located adjacent to and are operated primarily as adjuncts of a grain processing facility, such as a flour mill, vegetable-oil processing plant, or distillery, shall not be deemed to be an elevator. In a facility that it used primarily for receiving, storing, and shipping grain, all parts of the main facility, and all annexes operated as part of the main facility, shall be deemed to be a part of the elevator, despite the fact that the parts or annexes may be used for special storage or handling purposes.

(22) *Exporter.* The person who causes grain to be shipped or delivered for shipment from the United States.

(23) *Federal Register.* An official U.S. Government publication issued under the Act of July 26, 1935, as amended (44 U.S.C. 301 *et seq.*).

(24) *Field appeal inspection service.* An official review performed, upon request, by a field office of the results of an original inspection service or a reinspection service.

(25) *Field office.* An office of the Service designated by the Administrator as the headquarters of a circuit to perform and supervise official inspection functions and official Class X or Class Y weighing functions.

(26) *Grain.* Barley, corn, flaxseed, mixed grain, oats, rye, sorghum, soybeans, triticale, and wheat.

(27) *Instructions.* The Notices, Instructions, and Handbooks issued by the Service.

(28) *Licensee.* Any person licensed by the Service.

(29) *Material error.* An error in the results of an official inspection function that exceeds the official tolerance, or any error in the results of an official Class X or Class Y weighing function.

(30) *Monitoring.* Reviewing activities performed under or subject to the Act for adherence to the Act and the regulations, standards, and instructions issued thereunder, and preparing reports of findings.

(31) *Offgrade grain.* In a shiplot or combined-lot inspection service, a quantity of grain that is lower in quality than the contract grade.

(32) *Official Class X weighing function (or service).* Any weighing, monitoring, or examining operation or procedure by official personnel or by approved weighers under the complete supervision of official personnel in determining the weight of grain; in monitoring the discharge of grain into or out of an elevator or carrier; in determining the suitability of a carrier or container, or the suitability of a stowage area in a carrier or container, to receive or store grain insofar as the suitability may affect the quantity of the grain; or in certifying the results of such operations or procedures.

(33) *Official Class Y weighing function (or service).* Any weighing, monitoring, or examining operation or procedure performed by approved weighers under the partial or complete supervision of official personnel in determining the weight of grain; in monitoring the discharge of grain into or out of an elevator or a carrier; in determining the suitability of a carrier or a container, or the suitability of a stowage area in a carrier or a container, to receive or store grain insofar as the suitability may affect the quantity of the grain; and in reporting the results to official personnel for certification purposes.

(34) *Official Class X and Class Y weighing procedures.* The methods and procedures for the official Class X or Class Y weighing of grain as set forth in §§ 800.95 through 800.104.

(35) *Official criteria.* A test or measure, other than an official factor, that describes or quantifies a physical or chemical property of grain and is approved by the Service for use in determining the quality or condition of grain, or other facts relating to grain.

(36) *Official factor.* A test or measure that describes or quantifies a physical or chemical property of grain and functions as a grading factor in the official standards and official criteria for grain.

(37) *Official inspection equipment testing function.* Any operation or procedure performed by official personnel in determining the accuracy of equipment used, or to be used, in the performance of official inspection functions, in accordance with the Official Performance Requirements for Grain Inspection Equipment set forth in Part 802 of this chapter.

(38) *Official inspection function (or service).* Any sampling, laboratory, or stowage examination function; or any testing or grading operation or procedure; or any other operation or procedure performed by official personnel in determining the kind, class, quality, or condition of grain or other facts relating to grain in accordance with the Official U.S. Standards for Grain or in determining the suitability of a carrier or container to receive or store grain insofar as the suitability may affect the quality or condition of the grain, or in certifying the results of such operations or procedures.

(39) *Official inspection procedures.* The methods and procedures for the inspection of grain as set forth in §§ 800.80 through 800.89.

(40) *Official inspection technician.* Any official personnel who perform or supervise specified official inspection functions and certify the results thereof, other than certifying the grade of the grain.

(41) *Official inspector.* Any official personnel who perform or supervise all or specified official inspection functions and certify the results thereof.

(42) *Official Performance Requirements for Grain Inspection Equipment.* The Official Perforance Requirements for Grain Inspection Equipment set forth in Part 802 of this chapter.

(43) *Official Performance Requirements for Grain Weighing Equipment and Related Grain Handling Systems.* The Official Performance Requirements for Grain Weighing Equipment and Related Grain Handling Systems set forth in Part 803 of this chapter.

(44) *Official personnel.* An individual who is licensed or authorized to perform or supervise official inspection or official Class X or Class Y weighing functions. For the purpose of the regulations, the term shall not include approved weighers or warehouse samplers.

(45) *Official sampler.* Any official personnel who perform or supervise all or specified official sampling functions and certify the results thereof.

(46) *Official sampling function (or service).* Any sampling or examining operation or procedure or any other operation or procedure performed by official personnel in obtaining an official sample of a lot of grain or in officially determining the odor, infestation, or other condition of a lot of grain, or in officially certifying the results of such operations or procedures.

(47) *Official stowage examination function (or service).* Any examining operation or procedure or any other operation or procedure performed by official personnel in determining the suitability of a carrier or container to receive or store grain, insofar as the suitability may affect the results of such operations or procedures.

(48) *Official stowage examiner.* Any official personnel who perform or supervise official stowage examination

functions and certify the results thereof.

(49) *Official tolerance.* A statistical allowance prescribed by the Service, on the basis of expected variation, for use in performing or supervising official inspection and official weighing equipment testing functions, reinspection functions, appeal inspection function, and in supervising results of original inspection functions.

(50) *Official U.S. Standards for Grain.* The Official U.S. Standards for Grain set forth in Part 801 of this chapter.

(51) *Official weigher.* Any official personnel who perform or supervise all or specified official Class X or Class Y weighing functions and certify the results thereof.

(52) *Official weighing equipment testing function.* Any operation or procedure performed by approved scale testing organizations, approved scale testers, or official personnel in determining the accuracy of the equipment used, or to be used, in the performance of official Class X or Class Y weighing functions in accordance with the Official Performance Requirements for Grain Weighing Equipment and Related Grain Handling Systems set forth in Part 803 of this chapter.

(53) *Official weight sample.* Sacks of grain obtained at random by, or under the complete supervision of, official personnel from a lot of sacked grain for the purpose of computing the weight of the grain in the lot.

(54) *Original inspection service.* An initial official inspection of grain.

(55) *Region.* A geographical portion of the United States assigned to a regional office. (A region includes one or more circuits.)

(56) *Regional office.* An office of the Service designated by the Administrator as the headquarters of a region.

(57) *Regulations.* The regulations in this chapter.

(58) *Reinspection service.* An official review of the results of an original inspection service performed, upon request, by the same agency or field office that performed the original inspection service.

(59) *Respondent.* In an inspection or weighing service, an interested person other than the applicant. In an administrative proceeding, the party proceeded against.

(60) *Review of weighing service.* An official review of the results of a Class X or Class Y weighing service performed, upon request, by the same agency or field office that issued the certificate for the Class X or Class Y weighing service.

(61) *Service.* The Federal Grain Inspection Service of the United States Department of Agriculture.

(62) *Shipper's Export Declaration.* The Shipper's Export Declaration, authorized by the U.S. Department of Commerce, Bureau of Census.

(63) *Specified service point.* A city, town, or other location specified by an agency or field office for the conduct of all or specified official inspection functions or official Class X or Class Y weighing functions, and within which the agency or the field office, as applicable, or one or more of its official licensed or authorized inspectors or weighers, is located.

(64) *Supervision.* Directing and coordinating the performance of official activities under the Act; training official and approved personnel in the performance of official activities; reviewing the performance of official activities for adherence to the Act and the regulations, standards and instructions issued thereunder; and effecting needed remedial or commendatory action.

(65) *This chapter.* Chapter VIII of the Code of Federal Regulations (7 CFR chapter VIII).

(66) *Warehouse sampler.* An elevator employee licensed under a contract with the Service to obtain samples of grain for a warehouseman's sample-lot inspection service.

ADMINISTRATION

§ 800.2 Objectives of the Act.

The objectives and purposes of the Act are shown in Section 2 of the Act (7 U.S.C. 74).

§ 800.3 Nondiscrimination—policy and provisions.

(a) *Policy.* In implementing, administering, and enforcing the U.S. Grain Standards Act, and the regulations in this Chapter, it is and shall be the policy of the Service to support and promote adherence to the provisions of the Civil Rights Act of 1964 (42 U.S.C. 2000d).

(b) *Nondiscrimination in employment.* Agencies and other persons performng inspection, weighing, or equipment testing functions under the Act pursuant to delegations, designations, contracts, or other authorizations by the Service are deemed subject to the equal employment provisions of the Civil Rights Act of 1964. No employee or applicant for employment of such agency or person shall be discriminated against because of race, color, religion, sex, age, or national origin.

(c) *Nondiscrimination in services.* All functions under the Act, shall be accomplished without discrimination because of race, color, religion, sex, age, or national origin by the Service and by agencies and other persons licensed or otherwise authorized to perform all or specified inspection, weighing, or equipment testing functions under the Act.

§ 800.4 Filing petitions for administrative actions.

Any interested person desiring to file a petition pursuant to the provisions of Section 553(e) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), for the issuance, amendment, or revocation of a regulation, standard, procedure, or instruction issued under the Act, may file the petition with the Administrator. All such petitions shall be given prompt consideration, and petitioners will be promptly notified of the disposition of their petitions.

§ 800.5 Filing complaints and reports of alleged violations.

(a) *Procedure.* Any person desiring to complain of or report an alleged unlawful, arbitrary, capricious, or unwarranted action or violation by official personnel or other alleged discrepancy or abuse in the inspection or weighing of grain or testing of equipment under the Act, or any other problem regarding the administration of enforcement of the Act, or any official activity or transaction with which the Act is concerned, may except as provided in paragraphs (c) and (d) of this section file such complaint or report with the Administrator or the Secretary in accordance with the Rules of Practice Governing Informal Proceedings in Part 808 of this Chapter. A complaint of discrimination in employment shall be investigated by the Department in accordance with the Part 15 regulations of the Office of the Secretary of Agriculture (7 CFR Part 15, Subparts A and B).

(b) *Action on complaints.* Upon receipt of a complaint or report made to the Administrator, an investigation shall be promptly made by the Service and appropriate action will be taken and reports will be made to the Congress in accordance with Sections 16(b) and 17(B) of the Act.

(c) *Reinspection, review, and appeal services.* Complaints involving the results of official inspection or official Class X or Class Y weighing functions shall, to the extent practicable, be submitted as requests for a reinspection service, a review of weighing service, a field appeal inspection service, or a Board appeal inspection service in accordance with §§ 800.125–800.131 and 800.135–800.140.

(d) *Foreign buyer complaints.* Inquiries or complaints from importers or other purchasers in foreign countries involving discrepancies in the quality or weight of U.S. export grain shall, to the extent possible, be submitted by the importers or purchasers to the appropriate U.S. agricultural attache in accordance with § 2.68(a)(15) of the regulations of the Office of the Secretary of Agriculture (7 CFR 2.68(a)(15)) and the instructions issued by, or approved in special cases by, the

Foreign Agricultural Service of the Department of Agriculture.

§ 800.6 Procedures for establishing regulations, grain standards, official criteria, performance requirements for equipment, and rules of practice.

Notice of proposals to prescribe, amend, or revoke the wording of the regulations, grain standards, official criteria, performance requirements for equipment, and rules of practice will be published in accordance with applicable provisions of the Administrative Procedure Act (5 U.S.C. 551, *et seq.*). In addition, in accordance with Section 4 of the Act (7 U.S.C. 76), proposals to establish, amend, or revoke grain standards will be made effective not less than 1 calendar year after promulgation, unless, for good cause, the Service determines that the public health, interest, or safety requires that they become effective sooner.

§ 800.7 Provisions governing the rules of practice.

Opportunities for hearings prescribed or authorized by Sections 7(g)(3), 10(d), and 17A(d) of the Act, and opportunities for hearings requested by respondents under Section 9 of the Act and § 800.179 of the regulations, shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under Various Statutes (7 CFR 1.130 through 1.151). Other adjudicatory actions that are made under the Act, regulations, or instructions, and affect the legal rights of one or more persons, shall be subject to review under the Rules of Practice Governing Informal Proceedings in Part 808 of this Chapter, when applicable.

§ 800.8 Publication of regulations, grain standards, performance requirements for equipment, and rules of practice.

The text of the following Parts of this Chapter will be published in the FEDERAL REGISTER and in such other media as the Service deems appropriate for the purpose:

Part 800—Regulations under the U.S. Grain Standards Act
Part 801—Official U.S. Standards for Grain
Part 802—Official Performance Requirements for Grain Inspection Equipment
Part 803—Official Performance Requirements for Grain Weighing Equipment and Related Grain Handling Systems
Part 808—Rules of Practice Governing Informal Proceedings under the U.S. Grain Standards Act.

§ 800.9 General waiver authority.

The Administrator may, in specific classes of cases, waive for limited periods any provision of the regulations in Part 800, the grade standards in Part 801, or the Rules of Practice Governing Informal Proceedings in Part 808 of this Chapter in order to (a) permit appropriate and necessary action in the event of national, regional, or local emergency; or (b) permit experimentation so that new procedures, equipment, and handling techniques may be tested to facilitate the sampling, testing, inspection, weighing, or handling of grain. Waivers issued under this authority shall conform with the objectives and provisions of the Act.

§ 800.10 Information about the Service, the Act, and the regulations.

Information about the Service, the Act, the regulations, the grain standards, the official criteria, the performance requirements for equipment, the rules of practice, and the instructions under the Act; official inspection, weighing, and equipment testing functions; general waivers under § 800.9; waivers of the mandatory inspection and weighing provisions under § 800.19; and exceptions to the restrictions on performing inspection services under § 800.82(d); and related information may be obtained by calling or writing the U.S. Department of Agriculture, Federal Grain Inspection Service, Washington, D.C. 20250, or any regional office or any field office of the Service, or any agency.

§ 800.11—800.14 [Reserved]

OFFICIAL INSPECTION AND OFFICIAL WEIGHING REQUIREMENTS

§ 800.15 Who is responsible for achieving compliance with the official inspection and official Class X weighing requirements.

(a) *Export grain.* In the case of export grain, the exporter of record, as shown on the completed Shipper's Export Declaration, shall be responsible for achieving compliance with the official inspection, official Class X weighing, and related certification provisions of Section 5(a)(1) of the Act: *Provided,* However, that the official inspection and weighing requirements of Section 5(a)(1) of the Act shall apply only to those persons who (1) exported 15,000 metric tons or more of grain during the preceding calendar year or (2) have exported 15,000 metric tons or more of grain during the current calendar year.

(b) *Grain received or shipped by export elevators at export port locations.* In the case of grain transferred into and grain transferred out of an export elevator at an export port location, the person who operates the export elevator shall be responsible for achieving compliance with the official Class X weighing provisions of Section 5(a)(2) of the Act: *Provided,* However, that the official weighing requirements of Section 5(a)(2) of the Act shall apply only to those persons who (1) exported 15,000 metric tons or more of grain during the preceding calendar year or (2) have exported 15,000 metric tons or more of grain during the current calendar year.

(c) *Grain in marked containers.* In the case of grain in a container that bears an official grade designation or an official mark, the person who effects the latter of two actions: (1) placing the designation or mark on the container or (2) placing the grain in a container that bears an official grade designation or an official mark, shall be responsible for achieving compliance with the official inspection or official weighing provisions of Section 13(a)(5) of the Act.

(d) *Grain for which representations have been made.* In the case of grain that is represented (1) to have been inspected or weighed under the Act, or (2) to be of a particular kind, class, quality, condition, or weight, as determined by an inspection or weighing under the Act, or (3) to have particular facts established with respect to grain by inspection or weighing under the Act, the person who makes the representation shall be responsible for achieving compliance with the official inspection or official weighing provisions of Sections 13(a)(6) and (a)(12) of the Act.

NOTE.—For restrictions with respect to official forms, official marks, and representations, see §§ 800.55 through 800.57.

§ 800.16 Determinations, "export elevator" and "export port location."

(a) *Export elevator.* For the purpose of Sections 3(v) and 5(a)(2) of the Act, an "export elevator" shall be any grain elevator, warehouse, or other storage or handling facility in the United States (1) which (i) exported 15,000 metric tons or more of grain during the preceding calendar year or (ii) has exported 15,000 metric tons or more of grain during the current calendar year; (2) from which bulk or sacked export grain is loaded aboard a carrier in which the grain is shipped from the United States, or from which bulk or sacked grain is loaded into a container for shipment to an export port location where the grain and the container will be loaded aboard a carrier in which it will be shipped from the United States; (3) which applies to the Service to be identified and listed as an "export elevator"; and (4) which is an approved weighing facility. (For provisions on approved weighing facilities, see § 800.196.) The person who operates an export elevator shall be responsible for making application to the Service to have the facility identified and listed as an "export elevator." A list of export elevators is available in accordance with § 800.10.

(b) *Export port location.* For the purpose of Sections 3(w) and 5(a)(2) of

the Act, an "export port location" shall be any coastal or border area, location, or site in the United States which (1) contains one or more export elevators as defined in paragraph (a) of this § 800.16 and (2) is identified and listed by the Service as an "export port location." A list of "export port locations" is available in accordance with § 800.10.

§ 800.17 Certification requirements for export grain.

(a) *Restriction.* Official Export Grain Inspection and Weight Certificates, Official Export Grain Inspection Certificates, and Official Export Grain Weight Certificates for bulk export grain will be issued only for export grain loaded by an export elevator.

(b) *Evidence of compliance.* (1) *Inspection.* Only a valid unsuperseded Official Export Grain Inspection and Weight Certificate, or a valid unsuperseded Official Export Grain Inspection Certificate, which shows the official grade of the grain, and is otherwise in compliance with the provisions of § 800.162, shall be deemed evidence of compliance with the official inspection requirements of Section 5(a)(1) of the Act.

(2) *Weighing.* Only a valid unsuperseded Official Export Grain Inspection and Weight Certificate, or a valid unsuperseded Official Export Grain Weight Certificate, which shows the official Class X weight of the grain and is otherwise in compliance with the provisions of § 800.161, shall be deemed evidence of compliance with the Official Class X weighing requirements of Section 5(a)(1) of the Act.

(c) *"Promptly furnished."* An Official Export Grain Inspection and Weight Certificate, an Official Export Grain Inspection Certificate, or an Official Export Grain Weight Certificate shall be deemed to have been "promptly furnished" in compliance with Section 5(a)(1) of the Act if the certificate is forwarded by the shipper, or the shipper's agent, to the consignee not later than 10 business days after the certificate is issued.

§ 800.18 Special inspection and weighing requirements for sacked export grain.

(a) *General.* Subject to the provisions of § 800.19, sacked export grain must be (1) officially sampled with an approved diverter-type mechanical sampler, (2) officially checkweighed at the time the grain is being sacked, and (3) officially checkloaded at the time the grain is being loaded aboard the export carrier, in accordance with the provisions of paragraphs (b) and (c) of this § 800.18.

(b) *Simultaneous sacking and loading.* If the sacking, official sampling, official checkweighing, loading, and official checkloading of export grain aboard an export carrier are performed at the same time, official export inspection and weight certificates which show the identification of the export carrier shall be issued.

(c) *Sacking prior to loading.* If the sacking, official sampling, and official checkweighing of export grain are performed prior to the loading and official checkloading of the grain aboard an export carrier, an official "OUT" inspection certificate and an official checkweighing certificate shall be issued for the grain. An official examination for condition and an official checkloading of the grain must then be made as the grain is loaded aboard the export carrier. If the examination for condition and the checkloading show that the identification of the grain has not changed, or the condition of the grain has not changed beyond expected variations shown in instructions issued by the Service, an official export inspection certificate and an official export weight certificate shall be issued on the basis of the "OUT" inspection certificate, the checkweighing certificate, and the checkloading. If the identification or the condition of the grain has changed, an official export inspection certificate and an official export weight certificate shall be issued on the basis of the most representative samples, including weight samples, available at the time the grain is loaded aboard the export carrier.

§ 800.19 Waivers of the official inspection and official Class X weighing requirements.

NOTE.—A waiver under this § 800.19 is not a waiver of the provisions of Sections 13(a)(5), 13(a)(6), or 13(a)(12) of the Act.

(a) *Seed grain exported for seeding purposes.* The provisions of Section 5(a) of the Act shall not be applicable to sacked seed grain that is exported for seeding purposes provided (1) the seed grain is (i) sold or consigned for sale and invoiced as seed; (ii) labeled with respect to kind, variety, purity, germination, and net weight; and (iii) identified as "Seed for seeding purposes" on the Shipper's Export Declaration; and (2) copies of the sales contract, the invoice, the bill of lading, the Shipper's Export Declaration, and related merchandising and shipping documents are made available, upon request by the Service, for review or copying purposes.

(b) *Grain shipped in bond.* The provisions of Section 5(a) of the Act shall not be applicable to grain that is shipped from a foreign country to a foreign country through the United States in bond in accordance with the provisions of the Part 18 regulations of the United States Customs Service (19 CFR Part 18).

(c) *Grain not sold by grade.* The inspection requirements for any given shipment of export grain that is neither exempted under § 800.19(a) or sold, offered for sale, or consigned for sale by grade shall be waived by the Service on a shipment-by-shipment basis upon request by the shipper or the shipper's agent, if (1) the contract, or the amendments thereto, clearly show that the grain is to be shipped without official inspection; (2) true copies of the contract, and the amendments thereto, if any, are received by the appropriate field office at least 24 hours prior to the start of the loading of the grain; (3) notice of the time and place of loading is furnished by the shipper or the shipper's agent to the appropriate field office at least 24 hours prior to the start of the loading of the grain; (4) the Shipper's Export Declaration, the invoice, if any, the bill of lading, and related shipping documents clearly show the statement "This grain was not officially inspected for grade;" and (5) copies of the invoice, if any, the bill of lading, the Shipper's Export Declaration, and related merchandising and shipping documents are made available, upon request, by the Service for review or copying.

(d) *Service not available.* Upon request by the shipper or the shipper's agent, the official inspection and the official Class X weighing requirements for export grain may be waived by the Service on a shipment-by-shipment basis whenever the Service determines that (1) official personnel are not or will not be available within a 24-hour period to perform needed inspection or weighing services; (2) the Shipper's Export Declaration, the invoice, if any, the bill of lading, and related shipping documents clearly show the statement: "This grain was not officially inspected for grade," or "This grain was not officially weighed," or "This grain was not officially inspected for grade and was not officially weighed," as appropriate; and (3) a true copy of the invoice, if any, the bill of lading, the Shipper's Export Declaration, and each related merchandising and shipping document is made available, upon request by the Service, for review or copying; and (4) the waiver will not impair the objectives of the Act.

§ 800.20—800.24 [Reserved]

RECORDKEEPING AND ACCESS TO FACILITIES

§ 800.25 Elevator and merchandising records required to be kept.

(a) *Definitions.* For the purpose of §§ 800.25 and 800.26, unless the context requires otherwise, the following terms shall be construed, respectively,

to have the meanings given for them below:

(1) *Areas and facilities.* All operational areas, including but not limited to automated data processing facilities that are an integral part of the inspection or weighing operations of an elevator; the loading and unloading docks; the floors in the headhouse and control rooms; all storage areas, including but not limited to the bins, the interstices, the bin floor, and the basement; and all handling facilities, including but not limited to the belts, other conveyors, distributor scales, spouting, mechanical samplers, and electronic controls.

(2) *Merchandiser.* Any person, other than a producer, who buys and sells grain. A person who operates as a broker or commission agent and does not take title to the grain that the person buys and sells shall not be deemed to be a merchandiser.

(3) *Quantity.* Pounds or kilograms, tons or metric tons, or bushels, as appropriate.

(4) *Each day.* The hours from midnight to midnight, unless specified otherwise in writing by the elevator.

(b) *Elevator recordkeeping.* Every person and every State or political subdivision of a State that (1) owns or operates an elevator that (i) ships cargo grain or (ii) receives or ships grain via railroad; and (2) requests as an applicant or otherwise obtains official inspection or weighing services other than (i) a submitted sample inspection service as prescribed in § 800.76(d), or (ii) a sampling service as prescribed in § 800.76(e), or (iii) a stowage examination service as prescribed in § 800.76(f) shall keep complete and accurate records of all receipts and shipments of grain by the elevator, as specified in paragraph (d) of this § 800.25 and, all other records for receipts and shipments that are maintained by the elevator in the normal course of good business practice.

(c) *Merchandiser recordkeeping requirements.* Every merchandiser of grain who takes legal title to grain but does not take actual possession, or does not own or operate an elevator, and thereafter requests as an applicant or otherwise obtains official inspection or weighing services other than (1) a submitted sample inspection service as prescribed in § 800.76(d), or (2) a sampling service as prescribed in § 800.76(e), or (3) a stowage examination service as prescribed in § 800.76(f) shall keep complete and accurate records of purchases and sales of grain, as specified in paragraph (e) of this § 800.25.

(d) *Records of receipts and shipments.* (1) *Receipts.* The complete record of receipts shall include the quality and quantity (whether officially or unofficially determined) of each kind of grain unloaded into or recieved by an elevator, the date the grain was received, the method of transportation, and the identification of the container.

(2) *Shipments.* The complete record of shipments shall include the quality and quantity (whether officially or unofficially determined) of each kind of grain loaded out or shipped or delivered for shipment by an elevator, the date the grain was shipped or delivered for shipment, the method of transportation, and the identification of the carrier or container.

(e) *Records of purchases and sales.* (1) *Purchases.* The complete record of purchases shall include the quality and quantity (whether officially or unofficially determined) of each kind of grain purchased by the merchandiser, the date the grain was purchased, the method of transportation, and the identification of the container.

(2) *Sales.* The complete record of sales shall include the quality and quantity (whether officially or unofficially determined) of each kind of grain sold by a merchandiser, the date the grain was sold, the method of transportation, and the identification of the container.

(f) *Preparation and keeping of records.* (1) The method and order of keeping the records specified in § 800.25 shall be at the discretion of the elevator or merchandiser and shall facilitate (i) routine use and audit, and (ii) in the case of export elevators at export port locations, a reconciliation of receipts, shipments, and stocks on hand.

(2) However, if it is found by the Administrator that an elevator's or merchandiser's records cannot be followed by normal audit procedures, the Administrator may issue instructions outlining a satisfactory method.

(3) Compliance with these instructions shall be deemed to be a requirement for obtaining service, as prescribed in § 800.46.

(g) *Retention period.* The minimum retention period for the records specified in § 800.25 shall be 3 years after the date of the transaction or activity. This requirement does not supersede or modify any other agreement that an elevator has with another Federal or State agency.

§ 800.26 Access to records and facilities.

(a) *Access to records.* Owners or operators of elevators and merchandisers who are required by paragraphs (b) and (c) of § 800.25 to keep records shall permit authorized representatives of the Secretary and the Administrator to have access to, and to copy, during customary business hours, any records which such owners, operators, or merchandisers are required to keep under paragraphs (d) and (e) of § 800.25.

(b) *Access to facilities.* Any person who is subject to the provisions of Sections 7A(k) and 13(a)(13) of the Act and any State or political subdivision of a State that is subject to the recordkeeping provisions of Section 12(d) of the Act and § 800.25 of this Part shall permit authorized representatives of the Secretary and the Administrator to have access to any and all areas and facilities of the elevator that are used in handling, receiving, shipping, storing, or weighing grain.

§ 800.27—800.29 [Reserved]

REGISTRATION

§ 800.30 Meaning of terms.

For the purpose of §§ 800.31 through 800.40, unless the context requires otherwise, the following terms shall be construed respectively to have the meanings given for them below:

(a) *Foreign commerce grain business.* The business of buying grain for sale in foreign commerce or the business of handling, weighing, or transporting of grain for sale in foreign commerce.

(b) *Regularly.* A person (1) who was engaged in foreign commerce grain business to the extent of 15,000 metric tons in the preceding calendar year or (2) who has engaged in foreign commerce grain business to the extent of 15,000 metric tons during the curent calendar year.

(c) *Controlled.* Ownership interest of 10 percent or more.

§ 800.31 Who must register.

Each person regularly engaged in foreign commerce grain business must register with the Service. This includes foreign-based firms operating in the United States, but does not include foreign governments or their agents. The Service will, upon request, register persons otherwise not required to register under this § 800.31, if such persons comply with requirements of §§ 800.33 and 800.34.

§ 800.32 When to register.

A person who is required to register pursuant to § 800.31 must file an application for a certificate of registration at least 30 calendar days before regularly engaging in foreign commerce grain business. For good cause shown, the Service may waive this 30-day requirement.

NOTE.—For the purpose of initial implementation of §§ 800.30 through 800.40, no person shall be required to register until 6 months after the effective date of these sections.

§ 800.33 How to register.

(a) *General.* Any person who is required or desires to obtain or renew a

certificate of registration shall file an application in accordance with this § 800.33 and pay fees prescribed by the Service.

(b) *Application requirements.* Applications for a certificate of registration, or a renewal of a certificate of registration, shall be made on a prescribed form furnished by the Service. Each application shall (1) be typewritten or legibly written by hand in English, (2) include all information prescribed by Section 17A of the Act and by the application form, and (3) be signed by the applicant. Upon a showing of urgency by an applicant, the information required by this paragraph (b) may be submitted to the Service via telephone, subject to confirmation in writing.

(c) *Additional information.* Upon request, an applicant shall furnish such additional information as is deemed necessary by the Service for the consideration of the application.

(d) *Withdrawal of application.* An application filed pursuant to this § 800.33 may be withdrawn by an applicant at any time.

§ 800.34 Registration fees.

(a) *Fees.* Fees for certificates of registration or renewals of certificates of registration shall be prescribed by the Service in accordance with the approved fee schedule.

NOTE.—For the purpose of initial implementation of this § 800.34, fees will be prorated to effectuate the certificate termination schedule contained in paragraph (b) of § 800.38.

(b) *Time and manner of payment.* The applicant for registration or renewal of registration shall submit the prescribed fee with the completed application. If an application is dismissed, the registration fee shall be refunded by the Service. No fee or portion of a fee shall be refunded if a certificate is issued and subsequently suspended or revoked under § 800.39.

(c) *Extra copies.* The Service shall charge a fee in accordance with § 800.71 for each additional copy of a certificate of registration requested by an applicant above those provided under § 800.36.

§ 800.35 Review of applications.

(a) *General.* Each application for a certificate of registration, or renewal of a certificate of registration, shall be reviewed to determine whether the application is in compliance with §§ 800.32, 800.33, and 800.34. If it is determined that the application is in compliance and the fee has been paid, a certificate of registration, or a renewal of a certificate of registration, shall be issued, as appropriate.

(b) *Application not in compliance.* If it is determined that an application is not in compliance with §§ 800.32, 800.33, and 800.34 and the noncompliance precludes a satisfactory review by the Service, the applicant shall be provided an opportunity to submit an amended application or to otherwise submit the needed information. If an amended application or the needed information is not or cannot be submitted by the applicant within a reasonable time, as determined by the Service, the application may be dismissed in accordance with paragraph (c) of this § 800.35.

(c) *Dismissal of application.* An application may be dismissed by the Service if it is determined that the application is not in compliance with §§ 800.32, 800.33, and 800.34. If an application is dismissed, the Service shall promptly notify the applicant in writing of the reasons for the dismissal.

§ 800.36 Issuance and possession of certificates of registration.

(a) *Issuing office.* All certificates of registration and renewals of certificates of registration shall be issued by the Service. The Service shall furnish the applicant with an original and three copies of the certificate or renewal. Each certificate shall become effective on the date of issuance.

(b) *Condition for issuance.* (1) *Compliance requirement.* Each certificate of registration is issued on the condition that the person who is registered will, during the term of the certificate, comply with all the provisions of the Act and the regulations under the Act.

(2) *Right of possession.* Each certificate of registration shall be the property of the Service, but each person who is registered shall have the right of possession of the certificate, subject to the provisions of § 800.40.

(c) *Advance notice.* Upon request by an applicant, notice of the issuance of a certificate of registration shall be transmitted to the applicant via telephone.

§ 800.37 Notice of change in information.

Notice of a change in the information submitted on or in relation to an application for a certificate of registration shall, in accordance with Section 17A(c) of the Act, be submitted by the applicant, or the holder of the certificate, as applicable, to the Service within 30 days of the discovery of such information. If the notice is submitted orally, it shall be promptly confirmed by the applicant in writing.

§ 800.38 Termination of certificate of registration.

(a) *Term of certificate of registration.* Except for the purpose of the implementation of §§ 800.30 through 800.40, each certificate of registration shall terminate on December 31 of the year for which it is issued. The termination date shall be shown on each certificate of registration.

(b) *Renewal notices.* Renewal notices shall be sent by the Service to holders of certificates of registration at least 60 days in advance of the termination date. The notices shall provide instructions for requesting renewal of the certificates. Failure to receive such notice from the Service shall not exempt holders of certificates of registration from the responsibility of having their certificates renewed on or before the expiration date prescribed in this § 800.38. Certificates of registration that are renewed shall (1) retain the same certificate number, (2) show the date of renewal and the word "Renewed," and (3) show a termination date of December 31 of the year for which it is issued.

§ 800.39 Suspension or revocation of certificates of registration for cause.

A certificate of registration is subject to suspension or revocation for causes prescribed in Section 17A(d) of the Act, or if the holder of the certificate has committed forcible assaults against official personnel in relation to the performance of their official duties, persistently committed any other act tending to intimidate or interfere with the performance of official duties by official personnel, or persistently tolerated such action by persons under the holder's control.

(a) *Procedure.* In suspending or revoking a certificate of registration for cause, the person to whom the certificate was issued (hereinafter the "respondent") shall be afforded an opportunity (1) for an informal conference in accordance with the Rules of Practice Governing Informal Proceedings in Part 808 of this Chapter and (2) if post conference procedures are requested by the respondent in accordance with Part 808, for a hearing in full accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 554, 556, and 557), and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (7 CFR, Part 1, Subpart H).

(b) *Notice of action.* When a certificate of registration is suspended or revoked under paragraph (a) of this § 800.39, the Service shall promptly notify the respondent of the reasons for the action.

§ 800.40 Surrender of certificate of registration.

(a) *General.* Each certificate of registration that is suspended or revoked for cause under § 800.39 shall be promptly surrendered to the Service by the respondent. In the case of death of a holder of a certificate, the certificate should be returned to the Service by the heirs of the deceased or

the administrator or the executor of the estate of the deceased.

(b) *Marking suspended or revoked certificates of registration.* Each suspended or revoked certificate of registration that is surrendered to the Service shall, upon receipt, be marked "Suspended," showing the period of the suspension, or marked "Revoked."

§§ 800.41-800.44 [Reserved].

CONDITIONS FOR OBTAINING OR WITHHOLDING OFFICIAL SERVICES

§ 800.45 Availability of official services.

(a) *Original inspection services; export grain.* Original inspection services on export grain will, insofar as practicable, be available in accordance with subparagraphs (1) and (2) of this paragraph (a), Section 7 of the Act, and §§ 800.115 through 800.120.

(1) *United States.* Original inspection services on bulk or sacked grain being exported from the United States will be available upon request of any interested person at any export elevator in the United States. (For information on export elevators, see § 800.16.)

(2) *Canada.* Original inspection services on U.S. grain in Canadian ports will be available upon request of any interested person at any elevator that is (i) located in Canada and (ii) equipped with approved diverter-type mechanical samplers.

(b) *Weighing services; export grain.* Class X weighing services on export grain will, insofar as practicable, be available in accordance with subparagraphs (1) through (3) of this paragraph (b), Section 7A of the Act, and §§ 800.115 through 800.120.

(1) *United States; bulk grain.* Class X weighing services on bulk grain being exported from the United States will be available upon request of any interested person at any export elevator in the United States. (For information on export elevators, see § 800.16.)

(2) *United States; sacked grain (checkweighing and checkloading).* Class X weighing (checkweighing and checkloading) services on sacked grain being exported from the United States will be available upon request of any interested person at any specified service point or any point conveniently reached therefrom.

(3) *Canada; bulk grain.* Class X weighing services on bulk U.S. grain in Canadian ports will be available upon request of any interested person at any approved weighing facility at a port location in Canada. (c) *Original inspection and Class X and Class Y weighing services, other than export grain.* Original inspection and Class X or Class Y weighing services, on other than export grain will, insofar as practicable, be available in accordance with subparagraphs (1) and (2) of this paragraph (c), Sections 7 and 7A of the Act, and §§ 800.115 through 800.120.

(1) *Inspection services.* Original inspection services on other than export grain in the United States will be available upon request of any applicant at any specified service point or any point conveniently reached therefrom in accordance with the provisions of Section 7 of the Act and §§ 800.115 through 800.120.

(2) *Weighing services.* Class X or Class Y weighing services on grain, other than export grain, in the United States will be available upon request of an applicant at an approved weighing facility in accordance with the provisions of Section 7A of the Act and §§ 800.115 through 800.120.

(d) *Reinspection, review of weighing, and appeal inspection services.* Reinspection services, review of weighing services, field appeal inspection services, and Board appeal inspection services will be available upon request of any interested person at specified service points conveniently reached therefrom, in accordance with §§ 800.125 through 800.130 and §§ 800.135 through 800.140.

(e) *Requests deemed under Act.* Requests submitted by interested persons to an agency or a field office for inspection or weighing services on grain shall be deemed to be a request under the Act and the regulations unless the request clearly states otherwise.

(f) *Proof of authorization.* If a request for inspection or weighing services is filed by an agent of an applicant, the agency or the field office receiving the request may, if it deems necessary, require written proof of the authority of the agent to submit the request.

(g) *Information on assigned areas, specified service points, agencies, field offices, and approved weighing facilities.* Information may be obtained in accordance with § 800.10 on (1) assigned areas of responsibility and specified service points where inspection and weighing services under the Act are generally available in the United States and Canada, (2) the circuits and regions in which the areas and points are located, (3) the agencies and the field offices that perform services in the areas and at the points, and (4) approved weighing facilities.

§ 800.46 Requirements for obtaining official services.

(a) *Consent and agreement by applicant.* The requirements specified in paragraphs (b) and (c) of this § 800.46 are considered essential to effectuate the purposes and provisions of the Act with respect to the performance of inspection and weighing services under the Act. In submitting requests for inspection and weighing services under the Act and in submitting or offering grain for inspection or weighing under the Act, the applicants and the owners of the grain shall be deemed to have consented and agreed to each general requirement and to each applicable special requirement specified in paragraphs (b) and (c) of this § 800.46.

(b) *General Requirements.* (1) *Access to grain.* Grain that is to be inspected or weighed under the Act must, except as provided in §§ 800.85, 800.86, 800.98, and 800.99, be made fully accessible by the applicant and the owner of the grain to official personnel and warehouse samplers, as applicable, for the performance of the requested inspection or weighing service and related monitoring and supervision activities. For the purpose of this § 800.46, grain is not "fully accessible" if the grain is offered for inspection or weighing in barges or other carriers that are closed at the time the grain is offered or made available for inspection and the carriers cannot be opened by or for official personnel, or under conditions prescribed in instructions issued by the Service as being unduly hazardous to the health or safety of official personnel. Conditions that are considered "unduly hazardous to the health and safety of official inspection personnel" include but are not limited to conditions at inspection or weighing sites; or the ingress or egress routes to inspection or weighing sites; and storage, stowage, and similar spaces where official services are performed.

(2) *Working space.* If grain is to be inspected or weighed under the Act at an elevator, adequate space must be provided by the applicant and the owner of the grain for use by official personnel, approved weighers, and warehouse samplers, as applicable, for the performance of (i) the requested inspection or weighing service and (ii) related monitoring and supervision activities. Space will be "adequate" if it meets the space, location, and safety requirements specified in instructions issued by the Service.

(3) *Notice of changes.* An applicant for inspection or weighing services under the Act must promptly notify the appropriate agency or field office in full detail of changes in the grain handling and weighing facilities, equipment, or procedures at the elevator owned or operated by the applicant that could materially impact upon official inspection or weighing under the Act.

(4) *Loading and unloading arrangements and conditions.* Applicants or owners of grain that is to be inspected or weighed under the Act as the grain is being loaded or unloaded must provide or make provisions for approved loading or unloading arrangements and conditions, as applicable, to facilitate the accurate inspection or weighing of the grain, to maintain the qual-

ity or quantity of the inspected or weighed grain, and to protect the health and safety of official personnel. The arrangements and conditions include but are not limited to arrangements and conditions in (i) the loading and unloading areas and the truck and railroad holding areas at an elevator; (ii) the gallery and other grain conveying areas; (iii) the elevator legs, distributor, and spouting areas; (iv) the pier or dock areas; (v) the deck or storage areas in the ship or other container; and (vi) the arrangements and equipment used in loading or unloading the carrier or in handling the grain.

(5) *Timely arrangements.* If a request is made for official services that are to be performed other than during a business day, the request shall be made in a timely manner by the applicant with the appropriate agency or field office. Otherwise, official personnel may not be available to provide the requested service. For the purpose of this subparagraph (5), "timely manner" shall mean not later than 2 p.m. of the preceding business day.

(6) *Observation of activities.* Applicants for service under the Act must permit any person (or the person's agent) who has a financial interest in the grain an opportunity to observe the sampling, weighing, loading, or unloading, as applicable, of the grain in accordance with Section 16 of the Act. Appropriate areas shall be mutually defined by the Service and facility operator. The areas shall be safe, shall afford a clear and unobstructed view of the performance of the activity, but shall not permit a close over-the-shoulder type of observation by the interested person (or their agent).

(7) *Payment of bills.* Applicants for inspection or weighing services under the Act must pay bills for the services promptly upon request.

(8) *Written confirmations.* Applicants for inspection or weighing services under the Act must, upon request by an agency or field office, promptly submit written confirmations for requested inspection or weighing services.

(9) *Keeping of records.* Each applicant that is subject to the recordkeeping requirements of § 800.25 must keep the records in accordance with § 800.25.

(10) *Access to facilities.* Each applicant that is subject to the provisions of Section 7A(k) of the Act and each applicant that is subject to the recordkeeping provisions of § 800.25 must permit authorized representatives of the Secretary or Administrator access to any elevator area used by the applicant, in accordance with § 800.26. Before entering the elevator, the authorized representative of the Secretary or the Administrator will contact or otherwise notify the elevator manager, his representative, or a security guard and furnish proof of identity and authority. While in the elevator, the authorized representative of the Secretary or the Administrator will abide by the safety regulations in effect at the elevator.

(c) *Special requirements.* (1) *Weighing services.* Official Class X or Class Y weighing services for bulk grain will be available only at approved weighing facilities and in accordance with the requirements of § 800.115(b).

(2) *Suitable carriers.* Official inspection or official Class X weighing services on outbound shipments which are sampled or weighed prior to loading will be available only if the carriers in which the grain is to be loaded are suitable for the loading, storing, or transportation of grain.

(3) *Bulk export grain.* Official inspection or weighing services on bulk export grain will be available only for grain loaded through an elevator that is identified and listed as an "export elevator" under § 800.16(a).

(4) *Sampling requirements.* For sampling requirements, see § 800.18(a) and §§ 800.82 through 800.84 of this Part.

(5) *Surveillance equipment.* Owners and operators of elevators shall provide, upon a finding of need by the Administrator, surveillance equipment and facilities including but not limited to closed-circuit television or other electronic equipment to monitor grain loading, unloading, handling, sampling, weighing, inspection, and related activities. Such a finding of need will be based primarily on manpower need and efficiency considerations.

(6) *Posting of signs at export port locations.* Owners and operators of export elevators at export port locations shall permit the Service to post conspicuous identification, directional, or warning signs, as deemed appropriate by the Service, at specified locations in or around the elevator, including but not limited to the truck, barge, and ship unloading, the truck, barge, and ship loading, and the sampling, inspection, and weighing areas. (For provisions on export port locations, see § 800.16.)

(7) *Names and addresses of respondents.* Applicants for inspection or weighing services under the Act must show on applications for reinspection, review of weighing, field appeal inspection, and Board appeal inspection services the name and address of each known respondent of record. (Failure to show the name and address of a known respondent of record shall be a violation of Section 13(a)(10) of the Act.)

(8) *Surrender of superseded certificates.* Applicants for inspection or weighing services under the Act must, upon request by an agency or a field office, promptly surrender superseded inspection or weighing certificates that are in the applicant's possession or custody. (The false use of a superseded certificate shall be deemed to be a violation of Section 13(a)(6) of the Act.)

§ 800.47 Withdrawal of request for official services.

(a) *General.* Requests for inspection or weighing services under the Act may be withdrawn by applicants at any time prior to (1) the release by official personnel of some or all of the results of the requested inspection or weighing services, or (2) when the results have otherwise become known to the applicants or to the respondents, or (3) the issuance of the official certificates for the requested inspection or weighing services.

(b) *Expenses of agency or field office.* Expenses, if any, incurred by an agency or field office with respect to a request that has been withdrawn by an applicant under this § 800.47 shall be payable by the applicant in accordance with the schedule of fees published by the agency or the Service, as applicable. For good cause shown, the requirement of this paragraph (b) may be waived by the chief inspector of the agency or the supervisor in charge of the field office.

§ 800.48 Dismissal of request for official services.

(a) *Conditions for dismissal.* Requests for inspection or weighing services under the Act shall be dismissed by an agency, or field office, or Board of Appeals and Review, as applicable, (1) if the requests are for prohibited services identified in § 800.78; or (2) if the requests are obviously frivolous or not substantial; or (3) if the agency, or the field office, or the Board of Appeals and Review, as applicable, lacks jurisdiction under the Act or the regulations to handle the requests; or (4) if sufficient evidence is not available upon which to make an accurate and true determination; or (5) if grain at rest in a carrier is officially sampled and the grain in the bottom compartment of the grain probe is the equivalent of two or more grades lower in quality than the grain in the remainder of the carrier; or (6) if the performance by official personnel of the requested service is clearly not practicable; or (7) for the reasons specified in §§ 800.117, 800.127, and 800.137.

(b) *Procedure for dismissal.* When an agency, or field office, or Board of Appeals and Review proposes to dismiss a request for inspection or weighing services under the Act, the agency, the field office, or the Board of Appeals and Review, as appropriate, shall inform the applicant of the proposed action and afford the applicant an op-

portunity, within a reasonable time as determined by the agency, the field office, or the Board of Appeals and Review, as applicable, to achieve compliance, if possible, with the conditions of paragraph (a) of this § 800.48, or to demonstrate to such agency, field office, or Board of Appeals and Review that the applicant has complied with such conditions. Thereafter the agency, field office, or Board of Appeals and Review, as applicable, shall determine whether the request should be dismissed. When a request for services that are required under the Act is dismissed, notice of the dismissal shall be given in accordance with §§ 800.117, 800.127, or 800.137, as appropriate. An informal complaint seeking review of a dismissal or a request for service may be filed by an interested party in accordance with § 800.5 and the Rules of Practice Governing Informal Proceedings in Part 808 of this chapter.

(c) *Expenses of agency, field office, or Board of Appeals and Review.* Expenses, if any, incurred by an agency, a field office, or the Board of Appeals and Review with respect to a request that has been dismissed under this § 800.48 by an agency, a field office, or the Board of Appeals and Review shall be payable by the applicant in accordance with § 800.47(b).

§ 800.49 Conditional withholding of official services.

(a) *Conditional withholding.* Inspection and weighing services under the Act shall be conditionally withheld by an agency, a field office, or the Board of Appeals and Review for failure of the applicant or owner of the grain to meet any requirements prescribed in § 800.46.

(b) *Procedure for withholding.* When an agency, field office, or Board of Appeals and Review proposes to conditionally withhold inspection or weighing services under this § 800.49, the agency, the field office, or the Board of Appeals and Review, as applicable, shall inform the applicant of the proposed action and the reasons for the proposal and afford the applicant an opportunity within a reasonable time as determined by the agency, the field office, or the Board of Appeals and Review, as applicable, to achieve compliance with the requirements in § 800.46, or to demonstrate to such agency, field office, or Board of Appeals and Review that the applicant or owner has complied with such requirements. Thereafter, the agency, field office, or Board of Appeals and Review, as applicable, shall determine whether the requests for inspection or weighing services shall be conditionally withheld. When request for services that are required by the Act are withheld, notice of the withholding shall be given to the applicant by the agency, the field office, or the Board of Appeals and Review, as appropriate, in writing. An informal complaint seeking review of a withholding of inspection or weighing services under this § 800.49 may be filed by an applicant in accordance with § 800.50 and the Rules of Practice Governing Informal Proceedings in Part 808 of this chapter.

(c) *Expenses of agency, field office, or Board of Appeals and Review.* Expenses, if any, incurred by an agency, a field office, or the Board of Appeals and Review with respect to a conditional withholding of inspection or weighing services under the Act shall be paid by the applicant in accordance with § 800.47(b).

§ 800.50 Refusal of official services.

(a) *Grounds for refusal.* Any or all inspection or weighing services under the Act may be refused, either temporarily or otherwise, by the Service (1) for causes prescribed in Section 10 of the Act or (2) if the applicant has (i) committed acts tending to intimidate or interfere with the performance of official duties by official personnel or (ii) tolerated such actions by persons under the applicant's control.

(b) *Procedure for temporary refusal.* (1) *Provision for temporary refusal.* Whenever the Service has reason to believe there is cause for a temporary refusal of inspection or weighing services in accordance with Section 10 of the Act, it may temporarily refuse to provide, or may temporarily refuse to authorize, the performance of any or all inspection or weighing services under the Act for an applicant for such services without first affording the applicant, hereafter referred to in this § 800.50 as the "respondent," an opportunity for a hearing.

(2) *Notice and effective date of temporary refusal.* Notice of a temporary refusal shall be promptly given to the respondent and to the agencies and field offices providing inspection or weighing services to the respondent, in accordance with paragraph (d) of this § 800.50. The temporary refusal shall be effective upon receipt of the notice by the respondent.

(3) *Termination of temporary refusal.* Within 7 business days following the issuance of a notice of temporary refusal, the Service shall (1) afford the respondent an opportunity for a hearing under paragraph (c) of this § 800.50 and continue the temporary refusal if arrangements satisfactory to the Service will not or cannot be effected by the respondent pending a final determination under paragraph (c) of this § 800.50; or (2) afford the respondent an opportunity for a hearing under paragraph (c) of this § 800.50 and terminate the temporary action if arrangements satisfactory to the Service can be and are effected by the respondent; or (3) terminate the temporary action with a suitable written notice or warning under Section 14(b) of the Act; or (4) terminate the temporary action without prejudice. The Service shall promptly notify the respondent and the agencies and the field offices that provide services for the respondent of the action under this subparagraph (b)(3).

(c) *Procedure for other than temporary refusal.* Except as provided in paragraph (b) of this § 800.50, in refusing to provide inspection or weighing services under the Act, the respondent shall be afforded an opportunity for a hearing in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 554, 556, and 557) and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR Part 1, Subpart H). If, as a result of the hearing or ancillary procedures, it is determined that there is a basis for refusal of service with respect to a respondent, the order refusing service shall be restricted to the particular location found in violation or to a particular type of service, as the facts may warrant.

(d) *Notice of action.* When inspection or weighing services are refused for any cause, the service shall promptly notify the respondent in writing, and the agencies and the field offices that provided services for the respondent, of the reason for the refusal. The notice shall clearly identify (1) the services that are refused, (2) the location where the services are refused, and (3) the time periods that the services are refused.

§ 800.51 Official services not to be denied.

Subject to the provisions of §§ 800.49 and 800.50, whenever official services, including but not limited to original services, reinspection services, review of weighing services, field appeal inspection services, or Board Appeal inspection services, are required or desired under the Act and the regulations, no person entitled to such services shall be denied or deprived of his right thereto by reason of any rule, regulation, bylaw, or custom of any market, board of trade, chamber of commerce, exchange, inspection department, or similar organization, or by any contract, agreement, or other understanding.

§ 800.52–800.54 [Reserved]

RESTRICTIONS ON REPRESENTATIONS

§ 800.55 Restrictions with respect to descriptions of grain by grade.

(a) *Description by grade.* The provisions of Section 6(a) of the Act prohibit the description of grain in any sale, offer for sale, or consignment for sale

by any grade other than an official grade. This includes description of the grade in any advertising, price quotation, other negotiation of sale, contract of sale, invoice, bill of lading, other document, or description on bags or other containers. For the purpose of this paragraph (a), a description by grade includes the use of the following terms: "U.S.," the numerals 1 through 5, the term "sample grade," or the name of a subclass or a special grade of grain specified in the Official U.S. Standards for Grain.

(b) *Proprietary brand names or trademarks.* The provisions of Section 6(a) of the Act generally permit the description of grain by a proprietary brand name or a trademark that does not resemble an official grade. For the purposes of Section 6(a) of the Act, a proprietary brand name or trademark that contains, singly or in combination, any of the terms referenced in paragraph (a) of this § 800.55 shall be deemed to resemble an official grade designation.

(c) *False description.* The provisions of Section 6(b) of the Act prohibit any false or misleading description, whether by official grade or otherwise, of grain in any sale, offer for sale, or consignment for sale in foreign commerce.

§ 800.56 Restrictions with respect to official forms.

The provisions of Sections 13(a)(1) through 13(a)(3) of the Act contain certain prohibitions with respect to official forms. For the purpose of Sections 13(a)(1) through 13(a)(3), the term "official form" shall include official licenses, authorizations, and approvals (§ 800.174); official certificates (§ 800.160); official pan tickets, official inspection logs, official export weight logs, weight sheets, shipping bin weight loading logs, and official equipment testing reports (§ 800.154); official certificates of registration (§ 800.36); and such other official forms as may be issued or approved by the Service or by an agency that show the name of the Service or the agency and a form number. The unauthorized use of such forms shall be deemed to be in violation of the provisions of Sections 13(a)(1) through 13(a)(3) of the Act.

§ 800.57 Restrictions with respect to official marks.

NOTE: The provisions of paragraph (a) with respect to the terms "official weighing," "officially weighed," and "official weight" shall become effective May 1, 1980.

(a) *Official marks.* The provisions of Sections 13(a)(1) and 13(a)(2) of the Act contain certain prohibitions with respect to official marks. For the purpose of Sections 13(a)(1) and 13(a)(2), the terms "official certificate," "official grade," "officially sampled," "officially inspected," "official inspection," "U.S. inspected," "loaded under continuous official inspection," "official weighing," "officially weighed," "official weight," "official Class X weight," "official Class Y weight," "Class X weight," "Class Y weight," "official supervision of weighing," "loaded under continuous official weighing," and "officially tested" are deemed to be official marks. The unauthorized use of such marks shall be deemed to be in violation of the provisions of Sections 13(a)(1) and 13(a)(2) of the Act.

(b) *Designations, marks, and representations.* The provisions of Sections 13(a)(5), 13(a)(6), and 13(a)(12) of the Act contain certain prohibitions with respect to official grade designations, official marks, and representations with respect to grain.

(1) The showing with respect to grain of an official grade designation, with or without factor information, or the official criteria information or the showing of the term "official grain standards" shall not, in the absence of additional information, be deemed a representation that the grain has been officially inspected.

(2) The showing with respect to grain of the term "official certificate" shall be deemed to be a representation that the certificate was issued under the Act, unless the term is correctly qualified to clearly show that the certificate was issued under the U.S. Warehouse Act.

(3) The showing with respect to grain of the terms "official grade," "officially sampled," and "U.S. inspected," singly or collectively, shall be deemed to be a representation that the grain has been sampled or inspected under the Act. The showing of the terms "officially inspected" and "official inspection" shall be deemed to be a representation that the grain has been inspected under the Act, unless the terms are correctly qualified to clearly show that the inspection was performed under the U.S. Warehouse Act.

(4) The showing with respect to grain of the term "loaded under continuous official inspection" shall be deemed to be a representation that the bulk grain in a ship or in a combined lot was loaded in a continuous operation and was officially sampled and officially inspected throughout the loading.

(5) The showing with respect to grain of the terms "official Class X weighing," "official Class Y weighing," "Class X weighing," "Class Y weighing," and "official supervision of weighing," or "officially supervised weight" shall be deemed to be a representation that the grain has been weighed under the Act. The showing of the terms "officially weighed" and "official weight" shall be deemed to be a representation that the grain has been weighed under the Act, unless the terms are correctly qualified to clearly show that the weighing was performed under the U.S. Warehouse Act.

(6) The showing of the term "loaded under continuous official weighing" shall be deemed to be a representation that the bulk grain in a shiplot or in a combined lot was loaded in a continuous operation and was officially Class X weighed throughout the loading.

(7) The showing with respect to grain inspection and weighing equipment of the term "officially tested" shall be deemed to be a representation that the inspection or weighing equipment has been tested under the Act, unless the term is correctly qualified to show that the equipment was tested under a State statute.

(8) The prohibited use of the designations, marks, and representations identified in subparagraphs (2) through (7) of this § 800.57 shall be deemed to be in violation of the provisions of Sections 13(a)(5), 13(a)(6), and 13(a)(12) of the Act.

§§ 800.58—800.59 [Reserved]

DECEPTIVE PRACTICES

§ 800.60 Deceptive actions and practices.

(a) *General.* If committed knowingly, in the absence of adequate notice to appropriate official personnel, any action or practice, including the loading, weighing, handling, or sampling of grain, that causes or is an attempt to cause the issuance by official personnel of a false or incorrect official certificate or other official form, is deemed to be deceptive and, as such, is a violation of Section 13(a)(3) of the Act. For the purposes of this paragraph (a), adequate notice is written or oral notice given to an official agency or the Service, as applicable, before official personnel begin to perform official inspection or weighing services. If oral notice is given, it must be confirmed in writing within 2 business days. To be adequate, the notice must explain the nature and extent of the action or practice in question and must identify the grain, stowage container, equipment, facility, and the official personnel actually or potentially involved.

(b) *Meaning of terms.* For the purpose of §§ 800.61 and 800.62, unless the context requires otherwise, the following terms shall be construed, respectively, to have the meanings given for them below:

(1) *Loading.* Placing grain in or aboard any carrier or container.

(2) *Handling.* Unloading, elevating, storing, binning, mixing, blending, drying, aerating, screening, cleaning, washing, treating, fumigating or otherwise preparing grain.

(3) *Weighing.* Determining and recording the weight of grain, monitoring the discharge of grain into an elevator or carrier, and delivering or offering grain for a determination of weight.

(4) *Sampling.* Obtaining a sample of grain or delivering of grain so that it may be sampled.

§ 800.61 Sampling and inspection.

(a) *General.* Each of the actions and practices identified in paragraphs (b) and (c) of this § 800.61 is deemed deceptive, as prescribed in paragraph (a) of § 800.60.

(b) *Actions and practices that bias or destroy the accuracy of official sampling.* No person who requests, as an applicant, or otherwise obtains or seeks to obtain official inspection services under the Act may:

(1) In loading grain that will be officially sampled with a probe while the grain is at rest in a container, place or load economically inferior grain or economically superior grain in the container in such a manner that a true average sample of the grain in the container cannot be obtained when the grain is sampled in accordance with the methods and procedures described in instructions issued by the Service. For the purposes of this subparagraph (1), economically inferior grain is any nongrain material or any kind, quality, or condition of grain that, if blended, would adversely affect the quality or grade of the remainder of the grain in a container; and economically superior grain is any kind, quality, or condition of grain that, if blended, would enhance the quality or grade of the remainder of the grain in a container;

(2) In loading grain that is officially sampled before the grain is loaded, or will be officially sampled with a probe while the grain is at rest in a container, load grain into a container that (i) contains fertilizer or other nongrain material; or (ii) is infested with live insects injurious to stored grain; or (iii) contains grain that is different in kind, quality, or condition than the grain being loaded; or (iv) has a commercially objectionable foreign odor; or

(3) Otherwise undertake any action or engage in any practice that will bias or destroy the accuracy of official sampling under the Act, except as provided for in paragraph (a) of § 800.60.

(c) *Actions and practices that bias or destroy the representativeness of an official sample.* No person who requests, as an applicant, or otherwise obtains or seeks to obtain official inspection services under the Act may:

(1) Shunt grain around an official sampling device or an official sampler; or, without prior approval from official personnel, manipulate the rate of flow of grain being sampled by an official sampling device or an official sampler; or manipulate the manner in which grain is presented to an official sampling device or an official sampler;

(2) Substitute, in whole or in part, an unofficial sampling device or sample delivery system for an official device or system; or, without prior approval form official personnel, alter the construction or operation of or otherwise manipulate an official sampling device or official sample delivery system;

(3) Add or remove grain or other material from an official sample, or dry, clean, or otherwise process the grain in the sample;

(4) Add any insecticide or other material that masks, or tends to mask, the true odor, class, grade, quality, or condition of the grain; or

(5) Otherwise undertake any action or engage in any practice that will bias or destroy the representativeness of an official sample, except as provided for in paragraph (a) of § 800.60.

§ 800.62 Weighing.

(a) *General.* Each of the actions and practices identified in paragraphs (b) and (c) of this § 800.62 is deemed deceptive, as prescribed in paragraph (a) of § 800.60.

(b) *Actions and practices that bias or destroy the accuracy of official weighing.* No person who requests, as an applicant, or otherwise obtains or seeks to obtain official weighing services under the Act may:

(1) Falsely represent that a weighing device, a weight-recording device, a weight ticket, a weight tape, or a weight sample is an official weighing device, an official weight sample, as applicable, or otherwise falsely represent that a weighing device, a weight-recording device, a weight ticket, or a weight tape has been approved, issued, or obtained under the Act;

(2) Without prior approval from official personnel, manipulate an official weighing device or official weight-recording device;

(3) Falsely decrease or increase the tare weight or the gross weight of a container or the grain in a container, or otherwise falsely decrease or increase the net weight of grain;

(4) Offer loads that exceed the nominal or marked capacity of the scale on which the loads are being or are to be officially weighed;

(5) Misrepresent to official personnel the quantity of grain in a container by using a container with a false floor, or false walls, or false partitions, or otherwise misrepresent the quantity of grain in a container; or

(6) Otherwise undertake any action or engage in any practice that will bias or destroy the accuracy of an official weighing under the Act, except as provided for in paragraph (a) of § 800.60.

(c) *Actions and practices that bias or destroy the representativeness of an official weight sample.* No person who requests, as an applicant, or otherwise obtains or seeks to obtain official weighing services under the Act may:

(1) Substitute, in whole or in part, an unofficial weight sample for an official weight sample; or otherwise represent that an unofficial weight sample is an official weight sample;

(2) Falsely add grain or other material to an official weight sample or falsely remove grain or other material from an official weight sample or otherwise manipulate an official weight sample; or

(3) Otherwise undertake any action or engage in any practice that will bias or destroy the representativeness of an official weight sample under the Act, except as provided for in paragraph (a) of § 800.60.

§ 800.63 Inspection and weighing.

(a) *General.* Each of the actions and practices identified in paragraph (b) of this § 800.63 is deemed deceptive, as prescribed in paragraph (a) of § 800.60.

(b) *Actions and practices that bias or destroy the accuracy of official inspection and official weighing.* No person who requests, as an applicant, or otherwise obtains or seeks to obtain official inspection or official weighing services under the Act may:

(1) In loading grain that has been officially inspected or weighed under the Act, divert part or all of the grain away from the container in which the grain is to be loaded; or substitute for the grain other grain that has not been officially inspected or weighted; or otherwise fail to deliver to the container all of the grain which has been officially inspected or weighed;

(2) In unloading grain that will be officially inspected or weighed under the Act, divert part or all of the grain so that the grain will not be officially inspected or weighed; or substitute other grain for the grain which is to be officially inspected or weighed; or fail to make reasonable efforts to remove all of the grain from the container; or otherwise fail to deliver the grain to official personnel for official inspection or weighing;

(3) After outbound grain has been officially inspected or weighed under the Act, remove grain or other material from the grain; add grain or other material to the grain; or otherwise alter in any manner the quality or quantity of the grain by removing or adding grain or other material unless the removal or addition is physically monitored by official personnel and is noted by such personnel on the appropriate inspection or weight certificate: *Provided,* However, that nothing in

this paragraph (3) shall prohibit the routine removal of airborne dust from the grain as specified in instructions issued by the Service;

(4) Present or offer a portion of a bin lot or other lot and represent that it is the entire lot; or represent or offer grain from one bin or lot and represent that it is from another bin or lot; or otherwise misrepresent in any manner the identification or the quantity of the grain;

(5) Present or offer a container for a stowage examination and misrepresent the identification of the stowage area; or present or offer a container that has been treated with a material that masks, or tends to mask, but does not destroy an objectionable odor in the stowage area; or otherwise mislead official personnel in the performance of their assigned stowage examination duties; or

(6) Otherwise undertake any action or engage in any practice that will bias or destroy the accuracy of an official inspection or an official weighing under the Act, except as provided for in paragraph (a) of §§ 800.60.

§ 800.64—800.69 [Reserved]

FEES

§ 800.70 Fees for official services performed by agencies.

(a) *Assessment and use of fees.* (1) Fees and charges assessed by an agency for official inspection services, official Class X or Class Y weighing services, or the testing of inspection equipment shall be reasonable and nondiscriminatory.

(2) In the case of a State or local governmental agency, the fees and charges shall not be used for any purpose other than to finance the cost of the official inspection functions, the official Class X and Class Y weighing functions, and the inspection equipment testing functions performed by the agency, or the cost of other closely related agricultural programs administered by the agency.

(b) *Approval required.* (1) *Restriction.* Except as provided in subparagraph (2) of this paragraph (b), only fees and charges that are specifically approved by the Service as reasonable and nondiscriminatory may be charged by an agency.

(2) *Waiver.* Fees and charges that were in effect on the effective date of this § 800.70 shall be deemed to have been approved by the Service. This waiver shall not bar a later disapproval by the Service upon a determination that the fees and charges are not reasonable or are discriminatory.

(c) *Reasonable fees.* Fees and charges shall be considered reasonable if they:

(1) cover the estimated total cost to the agency of (i) official inspection, (ii) official Class X or Class Y weighing, or (iii) inspection equipment testing functions, and (iv) related supervision and monitoring functions performed by the agency;

(2) are reasonably consistent with the fees and charges assessed by adjacent aencies for similar services; and

(3) are assessed on the basis of (i) the average cost of performing the same services at all locations served by the agency (e.g., the average cost per bushel, ton, hour, or carrier for performing "IN" trucklot, "OUT" carlot, or "LOCAL" binlot inspection services) or (ii) the average cost of performing like services at all locations served by the agency (e.g., the average cost per bushel, ton, hour, or carrier for performing all trucklot, carlot, bargelot, shiplot, binlot, or submitted sample inspections).

(d) *Nondiscriminatory fees.* Fees and charges shall be considered nondiscriminatory if they are assessed and collected from all applicants for official services in a fair and impartial manner in accordance with the approved fee schedule. Charges for time and travel costs incurred in providing service at a location away from the service point may be assessed in accordance with the approved fee schedule.

(e) *Schedule of fees and charges to be established.* (1) Each agency shall establish a schedule of fees and charges for the official services performed by the agency. The schedule shall be in a format approved by the Service and shall include a fee or charge for each kind of official service or other service, if any, performed by the agency, including but not limited to services (i) performed on a regular basis or (ii) on a contract basis (sometimes called a guaranteed station basis).

(2) The schedule shall be published or otherwise made available by the agency to the users of the service.

(3) A copy of each schedule shall be retained in accordance with § 800.152.

(f) *Application for approval of fees and charges.* (1) *Time requirement.* An application for approval of a fee or charge, or a change in a fee or charge, shall be submitted to the Service not less than 60 days in advance of the proposed date of the fee, charge, or change. The Service, however, may grant exceptions on a case-by-case basis. Failure to submit an application within the prescribed time period may be considered grounds for postponement or rejection of the request.

(2) *Contents of application.* Each application shall show (i) the present fee or charge, if any; (ii) the proposed fee or charge, together with data showing in detail how the proposed fee or charge or the proposed change was developed; and (iii) the proposed date of the fee, charge, or change.

(g) *Review of application.* (1) *Approval action.* If upon review it is found that the application and the financial data support the fee or charge, or support the proposed change in a fee or charge, the application will be marked "approved" and returned to the agency.

(2) *Denial action.* If it is determined that the application or the data do not support the fee or charge or the proposed change, approval of the application will be withheld pending receipt of supportive data from the agency. If the supportive data are not submitted within a reasonable period, as determined by the Service, the application shall be denied. In the case of a denial of an application, the agency shall be notified of the reason for denial.

(h) *Failure to obtain approval or to publish.* The assessment or collection of fees or charges that have not been approved by the Service, or have not been published in accordance with the requirements of this § 800.70 shall be deemed to be a violation of the regulations.

§ 800.71 Fees for official services performed by the Service. [Reserved]

§ 800.72 Explanation of Service fees and additional fees.

(a) *Costs included in fees.* Fees for official inspection, weighing, and related services include: (1) the cost of per diem or subsistence during travel and the cost of transportation to perform the service requested; (2) callback payments to Service employees; (3) postage and other delivery costs; and (4) except as provided in subparagraph (b)(2) of this § 800.72, the cost of certification. The fees for official inspection services and nonregular workday weighing services in the United States and for nonregular workday official inspection and weighing services in Canada also include the cost of overtime.

(b) *Fees in addition to unit and hourly fees.* (1) Fees for standby shall be assessed in all cases, except no fee shall be assessed for standby performed under a service contract for (i) official weighing services in the United States or (ii) for official inspection and weighing services in Canada.

(2) The original and three copies of each original, divided-lot, reinspection, field appeal inspection, or Board appeal inspection certificate shall be issued to the applicant of record or to the applicant's order. For a field appeal inspection service or a Board appeal inspection service, a copy of each certificate or divided-lot certificate shall also be issued to each respondent of record or to the respondent's order. The fee for additional copies furnished on request of an applicant or a respondent shall be $2.50 per copy.

§ 800.73 Computation and payment of Service fees; general fee information.

(a) *When hourly rates begin.* Hourly rates shall begin when the Service representative arrives at the point of service and is available to perform service and shall end when the representative departs from the point of service, computed to the nearest quarter hour (less meal time, if any).

(b) *Computing standby.* Standby shall be computed whenever a Service representative: (1) has been requested by an applicant to perform a service at a specified time and location; (2) is on duty and is ready to perform the service requested; and (3) is unable to perform the service requested because of a delay by the applicant for any reason. Standby shall be computed to the nearest quarter hour (less meal time, if any). Standby shall not be applicable under contract services.

(c) *Definitions relating to fees.* The following definitions shall apply to terms used in §§ 800.72 and 800.73.

(1) "Regular workday" shall mean the hours of 6 a.m. to 6 p.m., local time, any Monday, Tuesday, Wednesday, Thursday, or Friday, that is not a "holiday."

(2) "Nonregular workday" shall mean any "holiday" and any other time that is not included in a "regular workday."

(3) "Holiday" shall mean the legal public holidays specified in paragraph (a) of Section 6103, Title 5, of the United States Code (5 U.S.C. 6103(a)) and any other day declared to be a holiday by Federal statute or Executive Order. Under Section 610 and Executive Order No. 10357, as amended, if the specified legal public holiday falls on a Saturday, the preceding Friday shall be deemed to be the holiday, or if the specified legal public holiday falls on a Sunday, the following Monday shall be deemed to be the holiday.

(4) "Service representative" shall mean an authorized salaried employee of the Service; or a person licensed by the Administrator under a contract with the Service.

(5) "Contract service" shall mean an inspection or weighing service performed pursuant to a contract between an applicant and the Service.

(d) *To whom fees are assessed.* Fees for inspection, weighing, and related services performed by Service representatives, including fees for standby and fees for extra copies of certificates, shall be assessed to and paid by the applicant for the services.

(e) *Form and time of payment.* Bills for fees assessed under the regulations for Federal inspection and weighing services will be issued by the Service at 4-week intervals. Payment of bills shall be made by check, draft, or money order payable to the Federal Grain Inspection Service. Payment shall be made within 30 calendar days after the due date shown on the bill.

(f) *Advance payment.* If required by the Administrator, fees shall be paid in advance. Any fees paid in excess of the amount due shall be refunded or offset on future billings.

(g) *Fees when an application for service is withdrawn or service is refused.* If an application for service is withdrawn or a service is refused pursuant to the regulations, the person who made the application for the service shall pay only such expenses as were incurred in connection with the service prior to the withdrawal or refusal.

(h) *Revolving fund.* Fees collected by the Service shall be deposited in a fund which shall be available without fiscal year limitation for the expenses of the Service incident to providing services under the Act.

(i) Material error. Except as provided in § 800.72(b)(1), no fees shall be assessed for reinspection services by the Service, review of weighing services, field appeal inspection services, or Board appeal inspection services, if it is found that there was a material error in the inspection or weighing services in question. A "material error" shall be an error in the results of an official inspection function that exceeds the official tolerance, or any error in the results of an official Class X or Class Y weighing function.

§ 800.74 [Reserved]

KINDS OF OFFICIAL SERVICES

§ 800.75 Kinds of official services; general.

For provisions on the kinds of official inspection and weighing services authorized by the Act, see §§ 800.76 and 800.77. For provisions on the levels of official inspection and weighing services authorized by the Act, see §§ 800.115-800.120, 800.125-800.131, and 800.135-800.140. For provisions on the availability of official inspection and weighing services, and conditions for obtaining and withholding official inspection and weighing services, see §§ 800.45 through 800.51.

§ 800.76 Kinds of official inspection services.

(a) *General.* The kinds of official inspection services available under the Act and the basis for performing the services are shown in paragraphs (b) through (f) of this § 800.76. If the grain is inspected for official grade and grading factors, or for official factors, the inspection shall be made in accordance with the Official U.S. Standards for Grain. If the grain is inspected for official criteria, the inspection shall be made in accordance with instructions issued by the Service.

(b) *Official sample-lot inspection service.* This inspection service consists of official personnel (1) sampling an identified lot of grain; (2) inspecting the grain in the sample for official grade and grading factors, or for official factors, or for official criteria, or any combination thereof, in accordance with the regulations, the instructions, and the request for inspection; and (3) issuing one or more official inspection certificates in accordance with § 800.160.

(c) *Warehouseman's sample-lot inspection service.* This inspection service consists of (1) the sampling with an approved diverter-type mechanical sampler of an identified lot of grain by a warehouse sampler; (2) the submitting of the sample and a completed sampling report on a form approved by the Service, by or for the applicant, to official personnel; (3) the inspecting of the grain in the sample by official personnel for official grade and grading factors, or for official factors, or for official criteria, or any combination thereof in accordance with the regulations, the instructions, and the request for inspection; and (4) the issuing by official personnel of one or more official inspection certificates in accordance with § 800.160.

(d) *Submitted sample inspection service.* This inspection service consists of (1) the submitting of a clearly identified sample of grain by or for an applicant to any agency or field office; (2) the inspecting of the grain in the sample by official personnel for official grade and grading factors, or for official factors, or for official criteria, or any combination thereof, in accordance with the regulations, the instructions, and the request for inspection; and (3) issuing by official personnel of one or more official certificates in accordance with § 800.160.

(e) *Official sampling service.* This service consists of official personnel (1) sampling an identified lot of grain; (2) dividing the sample into two or more representative portions, as requested by the applicant, and sealing the portions in a manner prescribed in instructions issued by the Service; (3) issuing an official certificate in accordance with § 800.160; and (4) forwarding the portions of the sample, together with a copy of the certificate, in accordance with the request of the applicant.

(f) *Official stowage examination service (for fitness to load or store grain).* (1) *Procedure.* This service consists of official personnel (i) visually determining whether an identified container is clean, dry, and free of odor and infestation and is otherwise suitable to receive or store grain, insofar as the suitability may affect the

quality or condition of the grain and (ii) issuing an official certificate in accordance with § 800.160.

(2) *Requirements and restrictions.* An official stowage examination may be obtained as a separate kind of official inspection service, or it may be obtained in conjunction with one or more other kinds of official inspection service. An official stowage examination and approval of the stowage space are required for an official sample-lot inspection service on (i) export grain and (ii) other lots of outbound grain that are officially sampled, inspected, or Class X weighed at the time of loading.

§ 800.77 Kinds of official weighing services.

(a) *General.* The kinds of official weighing services available under the Act and the basis of performing the services are shown in paragraphs (b) through (e) of this § 800.77.

(b) *Official Class X weighing service.* (1) *Procedure.* This service consists of official personnel (i) physically performing or completely supervising the loading or the unloading, as applicable, of an identified lot of bulk or sacked grain; (ii) physically weighing or completely supervising the weighing of the grain; and (iii) issuing an official weight certificate in accordance with § 800.160.

(2) *Requirements and restrictions.* Official personnel must completely supervise the loading, unloading, and weighing of the grain, and the weighing must be physically performed by approved weighers or official personnel.

(c) *Official Class Y weighing service.* This service consists of (1) the physical weighing by approved weighers of each identified lot of bulk or sacked grain; (2) the recording by approved weighers of the weight information and the forwarding by approved weighers of the weight information to official personnel; (3) the partial or complete supervision, as specified by the Service by official personnel, of the loading or the unloading, the weighing, and the recording and forwarding of the weight information; and (4) the issuing by official personnel of a weight certificate for each identified lot of bulk or sacked grain weighed by the approved weighers, in accordance with § 800.160.

(d) *Checkweighing service (sacked grain).* This service consists of official personnel (1) physically obtaining or completely supervising the obtaining of an official weight sample; (2) physically weighing or completely supervising the physical weighing of the official weight sample; (3) determining the estimated total gross, tare, and net weights, or the estimated average gross or net weight per filled sack, in accordance with the regulations, the instructions, and the request by the applicant; and (4) issuing an official certificate in accordance with § 800.160.

(e) *Checkloading service (sacked grain).* This service consists of official personnel (1) performing a stowage examination service in accordance with paragraph (f) of this § 800.77; (2) counting or computing the number of filled sacks of grain as they are loaded aboard an identified carrier; (3) if practicable, affixing or completely supervising the affixing of door seals to the railroad car or other carrier; and (4) issuing an official certificate in accordance with § 800.160.

(f) *Stowage examination service (for fitness to carry grain).* (1) *Procedure.* This service consists of official personnel (i) visually determining whether an identified carrier is suitable for carrying grain, insofar as the suitability may affect the quantity of grain and (ii) issuing an official certificate in accordance with § 800.160(b)(25).

(2) *Requirements and restrictions.* A stowage examination may be obtained as a separate kind of official weighing service, or it may be obtained in conjunction with one or more other kinds of official weighing service. An official stowage examination and approval of the stowage space are required for an official Class X weighing service on (i) export grain and (ii) other lots of outbound grain that are officially sampled, inspected, or Class X weighed at the time of loading.

§ 800.78 Prohibited services; restricted services.

(a) *Prohibited services.* The following services shall not be performed by or obtained from agencies or field offices: The inspection or weighing of grain on the basis of (1) unofficial standards, (2) unofficial procedures, (3) unofficial factors, or (4) unofficial criteria.

(b) *Restricted services.* (1) *Not standardized grain.* If an inspection or weighing service is requested under the Act on a sample or a lot of grain that does not meet the requirements for that grain as set forth in the Official U.S. Standards for Grain, an official inspection certificate showing the statement "Not Standardized Grain" shall be issued by official personnel in accordance with instructions issued by the Service.

(2) *Grain screenings.* The inspection or weighing of grain screenings may be obtained from field offices in accordance with instructions issued by the Service and may be available from agencies.

§ 800.79 [Reserved]

INSPECTION METHODS AND PROCEDURES

§ 800.80 Objective of inspection services.

(a) *Objective.* The objective of the official inspection service is to provide, upon request, impartial and accurate information about grain quality and grain containers in a timely and efficient manner so that grain may be marketed in an orderly and timely manner and trading in grain may be facilitated.

(b) *Definitions.* For the purpose of this § 800.80, unless the context requires otherwise, the following terms shall be construed, respectively, to have the meanings given them below.

(1) *Impartial information.* Inspection information shall be considered "impartial" if the information is developed independently by official personnel or, if it is not, the inspection certificate clearly indicates that fact.

(2) *Accurate information.* Inspection information shall be considered "accurate" if the information (i) is repeatable within expected variations set forth in instructions issued by the Service; (ii) is developed in accordance with the methods and procedures prescribed in § 800.81; and (iii) truly reflects the quality of the grain, or the fitness of the container, at the time the information was developed.

§ 800.81 Methods and order of performing official inspection services.

(a) *Methods.* (1) *General.* All sampling, testing, grading, stowage examination, and other official inspection services performed under the Act shall be performed in accordance with the methods and procedures prescribed in the regulations and instructions issued by, or approved in specific cases by, the Service.

(2) *Lot inspection services.* Determinations that are based on a sampling and examination of the grain in a lot shall be based on a proportionate or random sampling and examination of the grain in the entire lot, except as provided in § 800.85(f) or (g), and an accurate analysis of the grain in the samples.

(3) *Stowage examination service.* Determinations that are based on an examination of a carrier or container, or a stowage area in a carrier or container, shall be based on a thorough and accurate examination of the carrier, container, or stowage area in accordance with such procedures as may be prescribed in instructions issued by, or approved in specific cases by, the Service.

(4) *Submitted sample inspection service.* The analysis of the grain in a submitted sample shall be of sufficient size as prescribed in instructions issued by the Service, to enable official

personnel to perform an accurate analysis for complete grade. If an accurate analysis cannot be made because of an inadequate sample size or other conditions, the inspection request shall be dismissed, or a partial inspection certificate shall be issued, in accordance with instructions issued by the Service.

(5) *Reinspection and appeal inspection service.* Determinations in a reinspection service, a field appeal inspection service, or a Board appeal inspection service shall be based on an independent and accurate redetermination of the official grade information, the official factor information, or other information consistent with the scope of the original inspection service. The results of previous determinations shall not be used in making and recording the initial redetermination in a reinspection service, field appeal inspection service, or Board appeal inspection service but shall be considered in verifying the accuracy of the redetermination and shall be used in applying the statistical tolerances provided for in §§ 800.129 and 800.139.

(b) *Order of service.* Official inspection services shall be performed insofar as consistent with good management in the order in which the request for the services is received. Precedence shall be given when necessary for the mandatory inspections specified in Section 5 of the Act. Precedence may be given to other kinds of inspection services under the Act with the approval of the Service.

(c) *Recording receipt of documents.* Each document submitted by or for an applicant for inspection service shall be promptly stamped or similarly marked by the agency, field office, or Board of Appeals and Review, as applicable, to show the date the document was received.

(d) *Conflicts of interest.* No official personnel shall perform or participate in performing an official inspection service on grain, or on a grain container, in which they have a direct or indirect financial interest. (For other restrictions on official personnel, see §§ 800.187 and 800.188.)

(e) *Certificate required.* As required by § 800.160, an official inspection certificate shall be issued for each official inspection service performed under the Act.

§ 800.82 Sample requirements; general.

(a) *Samples for lot inspection services.* (1) *Original lot inspection service.* To be considered official for original lot inspection purposes, a sample must be (i) physically obtained from the grain in the lot that is represented by the sample; (ii) obtained by a licensed or authorized person; (iii) representative of the grain in the lot, as specified in paragraph (b) of this § 800.82; (iv) protected from manipulation, substitution, and improper or careless handling, as specified in paragraph (c) of this § 800.82; and (v) obtained within prescribed geographical boundaries, as specified in paragraph (d) of this § 800.82. Warehouseman's samples, submitted samples, and other samples that do not meet the requirements of this paragraph (a) are not considered official samples.

(2) *Lot reinspection service performed by agency.* To be considered official for a lot reinspection service performed by an agency, a sample, including an official file sample, must (i) be obtained by official personnel and (ii) otherwise meet the requirements of clauses (i) through (v) in subparagraph (1) of this paragraph (a).

(3) *Lot reinspection service and appeal lot inspection service performed by the Service.* To be considered official for a lot reinspection service, a field appeal lot inspection service, or a Board appeal lot inspection service performed by the Service, a sample, other than an official file sample, must (i) be obtained by an authorized employee of the Service or a licensed sampler, other than an employee of an agency and (ii) otherwise meet the requirements of clauses (i) through (v) in subparagraph (1) of this paragraph (a).

(4) *Mandatory inspections.* Samples for the inspections specified in Section 5 of the Act may not be obtained by warehouse samplers or any person other than official personnel.

(b) *Representative sample.* No sample shall be deemed respresentative of a lot of grain unless the sample (1) is of the size prescribed in instructions issued by the Service and (2) has been obtained, handled, and submitted in accordance with procedures prescribed in instructions issued by, or approved in specific cases by, the Service. A sample which fails to meet the requirements of this paragraph (b) may, upon request of the applicant, be inspected as a submitted sample, in accordance with § 800.76(d).

(c) *Protecting samples.* (1) *Official samples.* Official agencies, field offices, the Board of Appeals and Review, official personnel, and other persons employed by or assigned to official agencies, field offices, or the Board of Appeals and Review shall protect official samples form manipulation, substitution, and improper and careless handling which might deprive the samples of their representativeness from the time of sampling until the inspection services are completed and the file samples have been discarded.

(2) *Warehouseman's samples and submitted samples.* Official agencies; field officies; the board of Appeals and Review; official personnel; and other persons employed by or assigned to official agencies, field officies, or the Board of Appeals and Review shall protect warehouseman's samples and submitted samples from manipulation, substitution, or improper or careless handling which might change the physical or chemical properties of the grain in the samples from the time the samples are received by the official agencies, field offices, or the Board of Appeals and Review until the inspection services are completed and the file samples have been discarded.

(d) *Restriction on official sampling.* No official agency or field office shall perform an original lot inspection service or a lot reinspection service on an official sample or a warehouseman's sample unless the grain from which the sample was obtained was physicaly located within the area of responsibility assigned to the agency or field office at the time the sample was obtained. Upon request and the showing of need, the Administrator may grant an exception to this rule on a case-by-case basis. Information on the exceptions may be obtained in accordance with § 800.10.

(e) *Disposition of samples.* (1) *Excess grain.* In sampling grain in lots, any grain that is obtained in excess of the quantity (i) specified in the instructions or approved in specific cases by the service for official samples for the requested inspection service, (ii) needed for the file samples prescribed by § 800.154(b)(4), and (iii) needed for samples requested by interested persons shall be returned to the lot from which the excess grain was obtained or to the owner of the lot or to his designated agent.

(2) *Inspection samples.* Inspection samples shall, after they have served their intended purpose, be disposed of as follows:

(i) Samples which contain toxic substances or materials shall be kept out of food and feed channels.

(ii) Samples obtained by, for, or submitted to agenices may be returned, upon request of the applicant, to the applicant or to the applicant's order at the applicant's expense, or may be sold, donated, destroyed, or otherwise disposed of by such agencies. A complete and accurate record of the disposition shall be maintained by each agency as prescribed in § 800.150(c).

(iii) Samples obtained by, for, or submitted to field offices or the Board of Appeals and Review shall become the property of the Service and may be disposed of in accordance with procedures prescribed in instructions issued by the Service.

§ 800.83 Sampling provisions by level of service.

(a) *Original inspection services.* (1) *Lot inspection services.* Each original

inspection service to determine the kind, class, grade, quality, or condition of a lot of grain shall be made on the basis of one or more samples obtained from the grain in the lot. In the case of an official sample-lot inspection service, the samples must be obtained and sent to the appropriate agency or field office by official personnel. In the case of a warehouseman's sample-lot inspection service, the samples must be obtained and sent to the appropriate agency or field office by a warehouse sampler.

(2) *Submitted sample services.* Each original submitted sample inspection service to determine the kind, class, grade, quality, or condition of a sample of grain shall be made on the basis of the grain in the sample as submitted for inspection.

(b) *Reinspection services and field appeal inspection services.* (1) *Lot inspection services.* Each reinspection service and each field appeal inspection service to determine the kind, type, class, quality, or condition of the grain in a lot shall be made on the basis of the most representative official samples available or that can be obtained at the time of the reinspection service or the field appeal inspection service. In performing reinspection and appeal inspection services, (i) a sample obtained with a probe shall generally be considered the most timely and the most respresentative with respect to heating, musty, sour, insect infestation, and other condition and odor factors and (ii) a sample obtained with an approved diverter-type mechanical sampler or with a pelican sampler shall generally be considered the most representative with respect to quality factors and official criteria. The determination as to which samples shall be deemed most representative shall be made by the official personnel performing the reinspection service or the field appeal inspection service if it is practicable to obtain new samples and new samples would generally be deemed more representative of the grain.

(2) *Warehouseman's sample services.* Each reinspection service and each field appeal inspection service to determine the kind, class, grade, quality, or condition of the grain in a warehouseman's sample shall be made on the basis of the relevant official file sample.

(3) *Submitted sample services.* Each reinspection service and each field appeal inspection service to determine the kind, class, grade, quality, or condition of the grain in a submitted sample shall be made on the basis of the relevant official file sample.

(c) *Board appeal inspection services.* Each Board appeal inspection service performed to determine the kind, class, grade, quality, or condition of the grain in a lot, or a warehouseman's sample, or a submitted sample shall be made on the basis of the relevant file samples.

(d) *Use of file samples.* (1) *Requirements for use.* File samples that are retained by agencies and field offices in accordance with the regulations and the procedures prescribed in instructions, or approved in specific cases by the Service, may be deemed representative for reinspection services, field appeal inspection services, and Board appeal inspection services, subject to the following conditions: (i) the file samples must have remained at all times in the custody and control of the agency or the field office that performed the inspection service; and (ii) the official personnel who performed the inspection service in question, and the official personnel who are to perform the reinspection service, the field appeal inspection service, or the Board appeal inspection service must believe the samples were representative of the grain at the time of the inspection service in question and that the quality or condition of the grain in the samples has not changed since the time of the inspection service in question.

(2) *Certificate statement.* When a reinspection service, a field appeal inspection service, or a Board appeal inspection service is based, in whole or in part, on a file sample, the certificate for the reinspection service, the field appeal inspection service, and the Board appeal inspection service shall show the statement "Results based on official file sample."

§ 800.84 Sampling provisions by kind of movement.

(a) *"IN" movements.* (1) *Bulk cargo shipments. Note:* For effective date, see paragraph (e) of this § 800.84. Except as may be approved by the Administrator on a shipment-by-shipment basis in an emergency, each lot inspection for official grade, official factor, or official criteria on an "IN" or an enroute cargo shipment of bulk grain (see § 800.16(b)(8)) shall be based on samples obtained from the grain (i) as the grain is being unloaded from the carrier, (ii) immediately after the initial elevation and as near as necessary to initial elevation to obtain a representative sample and to protect the grain flow, and (iii) by means of diverter-type mechanical samplers approved by and operated in accordance with instructions issued by the Service: *Provided,* That nothing in this subparagraph (a)(1) shall preclude the applicant from requesting that official personnel determine the condition, prior to unloading, on the basis of a probe sample. For the purpose of this subparagraph (a)(1), the condition shall be deemed to include only the factors heating, musty, sour, and weevily. Information on exceptions to these provisions may be obtained in accordance with § 800.10.

(2) *Other movements.* Each lot inspection on an "IN" or an enroute movement of grain (see § 800.161(b)(8)) other than a bulk cargo movement shall be based on official samples obtained while the grain is at rest in the container, or during unloading, or after unloading, and immediately after the initial elevation, in accordance with procedures prescribed in instructions issued by, or approved in specific cases by, the Service.

(b) *"OUT" movements (export and cargo movements).* (1) *Bulk grain. Note:* For effective date, see paragraph (e) of this § 800.84. Except as may be approved by the Administrator on a shipment-by-shipment basis in an emergency, each lot inspection for official grade, official factor, or official criteria on an export shipment or an "OUT" cargo shipment of bulk grain (see § 800.161(b)(8)) shall be based on samples obtained (i) from the grain as the grain is being loaded aboard the final carrier; (ii) after the final elevation of the grain prior to loading and as near to the final loading spout as is physically practicable (unless representative samples can be obtained before the grain reaches the final loading spout); and (iii) by means of diverter-type mechanical samplers approved by and operated in accordance with instructions issued by the Service: *Provided,* That nothing in this subparagraph (b)(1) shall preclude the applicant from requesting that official personnel determine the condition on cargo shipments (except ships) after loading, on the basis of a probe sample. For the purpose of this subparagraph (b)(1), condition shall be deemed to include only the factors heating, musty, sour, and weevily. An official certificate shall be issued in accordance with § 800.160 showing the results of the condition examination. However, the certificate for the condition examination shall not supersede any outstanding certificate. Information on exceptions to these provisions may be obtained in accordance with § 800.10.

(2) *Sacked grain.* Except as may be approved by the Administrator on a shipment-by-shipment basis in an emergency, each lot of sacked export and sacked cargo grain shall be sampled in accordance with the provisions of § 800.18 and instructions issued by, or approved in specific cases by, the Service.

(c) *"OUT" movements (other than export and cargo movements).* Each lot inspection on an "OUT" movement of grain (see § 800.161(b)(8)) other than export and cargo movements shall be based on official samples ob-

tained (1) from the grain as the grain is being loaded aboard a carrier or (2) while the grain is at rest in the carrier, in accordance with procedures prescribed in instructions issued by, or approved in specific cases by, the Service.

(d) *"LOCAL" inspection.* Each lot inspection on a "LOCAL" movement of grain (see § 800.161(b)(8)) shall be based on official samples obtained while the grain is at rest in the container, or during unloading, or while the grain is being transferred, in accordance with procedures prescribed in instructions issued by, or otherwise approved in specific cases by, the Service.

(e) *Time requirements for installing samplers.* The provision of subparagraphs (a)(1) and (b)(1) of this § 800.84 will require the installation or relocation by certain elevators of diverter-type mechanical samplers. Although provision is made for granting exceptions to the requirement on an emergency basis, each elevator that desires official inspection services should review its operations and, as needed, install or relocate diverter-type mechanical samplers as soon as practicable. Where installation or relocation is required, the final date for submitting plans to the service for the installation and relocation of the samplers shall be January 1, 1980, and the final date for completing the installation or relocation shall be January 1, 1981.

§ 800.85 Inspection of grain in land carriers and barges in single lots.

(a) *General.* The lot inspection of bulk or sacked grain loaded aboard, or being loaded aboard, or discharged from a single truck, trailer, truck/trailer combination, railroad car, river barge (including barges designed to be loaded aboard oceangoing ships or oceangoing barges), or bay boats, and grain in a bin, warehouse, or similar container (excluding ships and oceangoing barges) shall be conducted in accordance with the provisions in this § 800.85 and such procedures as may be prescribed in instructions issued by, or approved in specific cases, by the Service.

(b) *Single and multiple grade procedure.* (1) *Single grade.* If the grain in a container is offered for official inspection as one lot and the grain is found to be uniform in condition, the grain shall be sampled, inspected, graded, and certificated as one lot. For the purpose of this paragraph (b), condition shall be deemed to include only the factors heating, musty, and sour.

(2) *Multiple grade.* If the grain in a container is offered for official inspection as one lot and the grain is found to be not uniform in condition by reason of the presence therein of portions of grain which are heating, musty, or sour, the grain in each portion shall be sampled, inspected, and graded separately, but the results shall be shown on one certificate. The certificate shall show the approximate quantity or weight of each portion, the location of each portion in the container, and the grade of the grain in each portion, in accordance with procedures prescribed in the instructions issued by, or approved in specific cases by, the Service.

(3) *Weevily grade.* If any portion of the grain in a lot is found to be "weevily," as defined in the Official U.S. Standards for Grain, the entire lot shall be graded "weevily."

(c) *One certificate per container; exceptions.* Except as provided in this paragraph (c), one official certificate shall be issued for the inspection of the grain in each truck, trailer, railroad car, barge, or similarly sized carrier or container. The requirements of this paragraph (c) shall not be applicable to (1) grain inspected in a combined lot under § 800.86 or (2) grain inspected under paragraph (d) of this § 800.85.

(d) *Bulkhead lots.* If the grain in a carrier is offered for inspection service as two or more lots and the lots are separated by bulkheads or other partitions, the grain in each lot shall be sampled, inspected, and graded as a separate lot in accordance with paragraphs (a) and (b) of this § 800.85. An official certificate shall be issued for each lot inspected. Each certificate shall show the term "Bulkhead lot," the approximate quantity or weight of the grain in the lot, the location of the lot in the carrier, and the grades of the grain in the lot in accordance with procedures prescribed in instructions issued by, or approved in specific cases by, the Service.

(e) *Bottom not sampled.* If bulk grain offered for inspection service is at rest in a container and is fully accessible for sampling in an approved manner, except that the grain is in such a condition or of such depth that the bottom of the container is not reached with each probe, the grain shall be sampled as thoroughly as possible with a probe approved by the Service. The grain in the resulting samples shall be inspected, graded, and certificated in accordance with the provisions of paragraphs (a) through (d) of this § 800.85, except that each certificate shall show the following completed statement: "Top ———— feet sampled. Bottom not sampled." A "Bottom not sampled" inspection does not meet the mandatory inspection requirements of Section 5 of the Act.

(f) *Partial inspection—heavily loaded.* (1) *General.* If bulk or sacked grain is (i) offered for inspection at rest in a container and is loaded in such a manner that it is possible to secure only door probe, shallow probe, door-sack probe, or surface-sack probe samples of, the lot or (ii) the grain is not trimmed or does not otherwise have a reasonably level surface, the container shall be considered to be "heavily loaded." If the request is for the inspection of an "IN" or "LOCAL" movement of grain, a partial inspection shall be made. If the request is for the inspection of an "OUT" movement of grain, the request shall be dismissed in accordance with § 800.48(a)(4).

(2) *Certification procedure.* If a partial inspection is made, the grain shall be sampled as throughly as possible with a probe approved by the Service and shall be inspected, graded, and certificated in accordance with the provisions of paragraphs (a) through (d) of this § 800.85, except that a "partial inspection—heavily loaded" certificate shall be issued. The certificate shall show the statement "Partial inspection—heavily loaded," in the space provided for remarks. The type of samples that were obtained shall be described in terms of "door probe," "shallow probe," "door-sack probe," or "surface-sack probe" samples, as appropriate. In the case of sacked grain, the approximate number of sacks accessible for sampling shall be stated.

(3) *Reinspection and appeal inspection procedure.* A request for a reinspection service or a field appeal inspection service on grain in a container that is certificated as "partial inspection—heavily loaded" shall be dismissed in accordance with § 800.48(a)(4) unless the grain is found to be fully accessible for sampling.

(4) *Definitions.* For the purpose of this paragraph (f), the following terms shall be construed as shown below:

(i) *Door-probe sample.* A sample taken with an approved bulk-grain probe from a lot of bulk grain that is loaded so close to the top of the carrier that it is possible to insert the probe only in the grain in the vicinity of the tailgate or hatch of the truck or trailer, the door or hatch of the railroad car, the hatch of the barge, or in a similarly restricted opening or area in the carrier in which the grain is located.

(ii) *Shallow-probe sample.* A sample taken with an approved bulk grain probe from a lot of bulk grain that is loaded so close to the top of the carrier that it is possible to insert the probe in the grain at the prescribed locations, but only at an angle greater or more obtuse from the vertical than the angle prescribed in the instructions issued by the Service.

(iii) *Door-sack probe sample.* A sample taken with an approved sack grain probe from a lot of sacked grain that is loaded so close to the top of the

carrier that it is possible to insert the probe only in the grain in the sacks in the vicinity of the tailgate or hatch of the truck or trailer, the door or hatch of the railroad car, the hatch of the barge, or in a similarly restricted opening or area in the carrier in which the sacks are located.

(iv) *Surface-sack probe sample.* A sample taken with an approved sack-grain probe from a lot of sacked grain that is so loaded or placed that it is possible to insert the probe only in the grain in the sacks in the upper portion, sides, or ends of the lot.

(5) *Restriction.* No "partial inspection—heavily loaded" inspection certificate shall be issued for any inspection other than the inspections described in this paragraph (f) and §§ 800.86(i)(2) and 800.87(i)(3).

(g) *Part-lots.* (1) *General.* If a portion of the grain in a container is removed, the grain that is removed and the grain remaining in the container shall, for the purpose of the regulations, be considered separate lots. If an inspection service is requested on either portion, the grain shall be sampled, inspected, graded, and certificated in accordance with paragraphs (a) through (e) of this § 800.85, except that a "part-lot" inspection certificate shall be issued.

(2) *Grain remaining in carrier.* The certificate for the grain remaining in the carrier shall show (i) the following completed statement "Partly unloaded; results based on portion remaining in (show carrier identification)," (ii) the term "Part-lot" following the quantity information, (iii) the identification of the carrier or container, and (iv) the estimated size and location of the part-lot substantially as follows: "Est. ¼ Car, Brake End."

(3) *Grain unloaded from carrier.* If the grain is sampled by official personnel as the grain is unloaded from the carrier, the certificate for the grain that is unloaded shall show the completed statements (i) "Part-lot; results based on portion removed from (show carrier identification)" and (ii) the term "Part-lot" following the quantity information. If the grain is not sampled by official personnel as the grain is unloaded from the carrier or container, the certificate may, upon request of the applicant, show a completed statement such as "Applicant states grain is ex-car ———" or "Applicant states grain is ex-barge ———," as applicable; but the certificate shall not otherwise show a carrier or container identification, or the term "Part-lot."

(h) *Identification for compartmented cars.* The identification for a part of a compartmented railroad car shall, in the absence of readily visible markings on the car, be stated in terms of the location of the grain in a compartment or bay, with the first bay at the brake end of the car being identified as B-1, and the remaining compartments or bays being numbered consecutively towards the no-brake end of the car.

§ 800.86 Inspection of grain in combined lots.

(a) *General.* The inspection for grade of bulk or sacked grain loaded aboard, or being loaded aboard, or discharged from two or more carriers as a combined lot shall be in accordance with the provisions of this § 800.86 and such procedures as may be prescribed in instructions issued by, or approved in specific cases by, the Service.

(b) *Definitions.* For purposes of this § 800.86, unless the context requires otherwise, the following terms shall be construed as shown below:

(1) *Combined lot.* Grain loaded aboard, or being loaded aboard, or discharged from two or more carriers (including barges designed for loading aboard a ship) and grain in two or more lots loaded aboard a ship.

(2) *Contract grade (contract quality).* The official grade, official factors, and official criteria specified in the sale or purchase confirmation or sale or purchase contract for the grain; or if there is no sale or purchase confirmation or sale or purchase contract, the official grade, official factors, and official criteria specified by the applicant for inspection.

(3) *Equivalent of one or more grades.* A quality difference involving special grades, dockage, official factors, and official criteria that is deemed equal by the Service to a difference of one or more grades as prescribed in instructions issued by, or approved in specific cases by, the Service.

(4) *Material portion.* A portion that is considered significant under a sampling plan prescribed in instructions issued by, or approved in specific cases by, the Service. If an applicant has been informed by official personnel or otherwise knows the quality of grain prior to the loading of the grain in a combined lot, any portion of grain that is offgrade by one or more grades or the equivalent of one or more grades shall be deemed to be a material portion.

(5) *Reasonably continuous operation.* In a given location, a loading or unloading operation that does not include inactive intervals in excess of 88 consecutive hours.

(6) *Uniform in quality.* A lot of grain in which no material portion is offgrade by one or more grades or the equivalent of one or more grades.

(c) *Application procedure.* (a) *For inspection during loading, or unloading, or at rest.* Applications for the inspection of grain in a combined lot that is to be inspected during loading, or unloading, or at rest shall (i) be filed in accordance with § 800.116(d); (ii) show the estimated quantity of grain that is to be certificated as one lot; (iii) show the contract grade for the grain; (iv) identify each truck, trailer, railroad car, barge, or other carrier in which the grain is being loaded or from which the grain is being unloaded.

(2) *For inspection recertification service.* Applications for the recertification of grain in lots that have been inspected and certificated as single lots shall (i) be filed within a reasonable time, not to exceed 2 business days after the latest inspection date of the individual lots and (ii) show the information specified in subparagraph (1) of this paragraph (c). For recertification provisions, see subparagraph (i) (5) of this § 800.86.

(d) *Inspection procedure; general.* (1) *Inspection during loading, or unloading, or at rest.* Grain in land carriers and barges that is to be inspected as a combined lot during loading, or during unloading, or at rest shall be inspected in accordance with the following procedure: (i) the grain must be sampled in one location in one reasonably continuous operation; (ii) representative samples must be obtained from the grain in each truck, trailer, railroad car, barge, or other carrier, unless otherwise specified in instructions issued by, or approved in specific cases by, the Service; and (iii) the grain loaded into, or unloaded from, or at rest in each carrier or container must be inspected and graded in accordance with the procedures prescribed in instructions issued by, or approved in specific cases by, the Service.

(2) *Inspection recertification service.* Grain that has been inspected and certificated as single lots may be recertificated as a combined lot in accordance with the following procedure: (i) the grain in each component lot must have been sampled in one location in one reasonably continuous operation; (ii) the originals of the official inspection certificates issued for the component lots must be surrendered to the appropriate agency or field office; (iii) representative file samples of the component lots must be available; (iv) the grain in the component lots must be of one grade and quality; and (v) the official personnel who issued the inspection certificates for the component lots and the official personnel who issued the inspection certificates for the combined lot must believe that the samples that were used as a basis for the component inspections were representative of the grain at the time of the inspections, that the quality or condition of the grain in the samples has not changed since the time of the component inspections, and that the quality or condition of the grain meets the uniformity requirements of the in-

spection plan for grain in combined lots.

(e) *Weighted average.* The official factor information and official criteria information shown on certificates for grain in a combined lot shall, subject to the provisions of subparagraphs (f) through (h) of this § 800.86, be based on the weighted averages of the analysis of the sublots in the lot and shall be determined in accordance with instructions issued by, or approved in specific cases by, the Service.

(f) *"Weevily" grain.* If the grain in a combined lot is offered for inspection as it is being loaded aboard the carriers for the lot and the grain, or a portion of the grain, is found to grade "weevily" because of insect infestation, the applicant shall be promptly notified and may exercise those options specified in instructions issued by the Service.

(g) *Grain uniform in quality.* The grain in each combined lot offered for inspection shall be sampled in a continuous manner and the resulting samples examined for uniformity of quality. If the grain in the samples is found to be uniform in quality and the grain in the carriers is loaded aboard or is unloaded from the carriers in a reasonably continuous operation, the grain in the lot shall be inspected, graded, and certificated as one lot. (The requirements of this paragraph (g) and paragraph (d) of this § 800.86 with respect to reasonably continuous loading or unloading shall not apply to grain which is at rest in carriers when the grain is offered for inspection.)

(h) *Grain not uniform in quality.* If the grain in a combined lot is found to be not uniform in quality or if the grain is not loaded or unloaded in a reasonably continuous operation, the grain in each portion, and the grain which is loaded or unloaded at different times, shall be sampled, inspected, graded, and certificated as separate lots.

(i) *Special certification procedures.* (1) *Grain not uniform in quality.* If the grain in a combined lot is found to be not uniform in quality under paragraph (h) of this § 800.86, the inspection certificate for each portion of different quality shall show (i) the grade, identification, and approximate quantity of the grain and (ii) such other information as may be required by the instructions issued by, or approved in specific cases by, the Service.

(2) *Partial inspection.* If an inbound movement of bulk or sacked grain is offered for inspection as a combined lot as the grain is at rest in the carriers and the grain is not fully accessible for sampling in a manner prescribed in instructions issued by the Service, a "partial inspection—heavily loaded" certificate shall be issued. Such certification shall be deemed not to meet the mandatory inspection requirements of Section 5 of the Act. (If a partial inspection service is requested on an outbound movement of grain in a combined lot, the request shall be dismissed in accordance with § 800.48(a)(4) on the ground a representative sample cannot be obtained.)

(3) *Official mark.* If the grain in a combined lot is inspected for grade as the grain is being loaded aboard the carriers for the lot, upon request by the applicant, the following mark shall be shown on the inspection certificate: "Loaded under continuous official inspection" or, when applicable, "Loaded under continuous official inspection and weighing." (See § 800.57.)

(4) *Combined-lot certification; general.* Each certificate for a combined-lot inspection service shall show the identification for the "Combined lot" or, at the request of the applicant, the identification of each carrier in the combined lot. If the identification of each carrier is not shown, the statement "Carrier identification available on official inspection lot" shall be shown on the inspection certificate in the space provided for remarks. The identification and the seal information, if any, for the carriers may be shown on the reverse side of the inspection certificate, provided the statement "See reverse side" is shown on the face of the certificate in the space provided for remarks.

(5) *Inspection recertification service.* (For provisions on applying for an inspection recertification service, see subparagraph (c)(2) of this § 800.86.) If the request for a combined-lot inspection service is filed after the grain in the component lots has been inspected and certificated, the combined-lot inspection certificate shall show:

(i) The date of inspection of the grain in the combined lot (if the component lots were inspected on different dates, the latest of the dates shall be shown);

(ii) A serial number other than the serial numbers of the inspection certificates that are to be superseded;

(iii) The location of the grain, if at rest, or the names or warehouses from which or into which the grain in the combined lot was loaded or unloaded;

(iv) A statement showing the approximate quantity of grain in the combined lot;

(v) A completed statement showing the identification of any superseded certificates as follows: "This Combined-Lot certificate supersedes certificates Nos. ———, dated ———." (The numbers shown in the statement shall in all the cases include the lettered prefix); and

(vi) If, at the time of issuing the combined-lot inspection certificate, the superseded certificates are not in the custody of the applicable agency or field office, the statement "The superseded certificates identified herein have not been surrendered" shall be clearly shown in the space provided for remarks, beneath the statement identifying the superseded certificates.

If the superseded certificates are in the custody of the applicable agency or field office, the superseded certificates shall be marked "Void" in a clear and conspicuous manner. Official personnel shall exercise such other precautions as may be found necessary to prevent the fraudulent or unathorized use of the superseded certificates.

(j) *Further combining.* After a combined-lot inspection certificate has been issued in accordance with this § 800.86, there shall be no further combining and no dividing of the certificate at a later date.

(k) *Limitation.* No combined-lot inspection certificate shall be issued (1) for any inspection service other than as described in this § 800.86 or (2) which shows a quantity of grain in excess of the quantity in the individual lots.

(l) *Reinspection service and appeal inspection service on combined lots.* A reinspection service or an appeal inspection service may be obtained on a combined lot or one or more sublots in a combined lot in accordance with §§ 800.125 through 800.130 and 800.135 through 800.140.

(m) *Other certification requirements.* For additional provisions governing the certification of grain in combined lots, see § 800.160 through 800.162.

§ 800.87 Inspection of shiplot grain in single lots.

(a) *General.* The inspection for grade of bulk or sacked grain loaded aboard, or being loaded aboard, or unloaded from a ship as a single lot shall be in accordance with the provisions of this § 800.87 and such procedures as may be prescribed in instructions issued by, or approved in specific cases by, the Service.

(b) *Definitions.* For the purposes of this § 800.87 unless the context requires otherwise, the following terms shall be construed, respectively, to have the meanings given for them in § 800.86(b):

Combined lot
Contract grade (contract quality)
Equivalent of one or more grades
Material portion
Reasonably continuous operation
Uniform in quality

The term "shiplot grain" shall mean grain loaded aboard, or being loaded aboard, or discharged from oceangoing vessels, including barges, lake vessels, and other vessels of similar or large capacity.

(c) *Application procedure.* Applications for the inspection of shiplot

grain that is to be inspected during loading, or unloading, or at rest as a single lot shall (1) be filed in accordance with § 800.116(d); (2) show the estimated quantity of grain that is to be certificated as one lot; (3) show the contract grade for the grain; and (4) identify the carrier and the stowage area in which the grain is being loaded, or from which the grain is being unloaded, or in which the grain is at rest.

(d) *Inspection procedure; general.* Shiplot grain that is to be inspected as a single lot during loading, or during unloading, or at rest shall be inspected in accordance with the following procedure: (1) the grain must be sampled in one inspection location in one reasonably continuous operation; (2) representative samples must be obtained from the grain in each portion that is submitted for inspection as a lot unless otherwise specified in instructions issued by, or approved in specific cases by, the Service; and (3) the grain loaded into or unloaded from, or at rest in each lot must be inspected and graded in accordance with the procedures prescribed in instructions issued by, or approved in specific cases by, the Service.

(e) *Weighted average.* The official factor information and official criteria information shown on certificates for shiplot grain in single lots shall, subject to the provisions of paragraphs (f) through (h) of this § 800.87, be based on the weighted averages of the analysis of the sublots in the single lots, and shall be determined in accordance with instructions issued by, or approved in specific cases by, the Service.

(f) *"Weevily grain."* (1) *Available Options.* If the grain in a single shiplot is offered for inspection as it is being loaded aboard a ship or other carrier and the grain, or a portion of the grain, is found to grade "weevily" because of insect infestation, the applicant shall be promptly notified and have the option of (i) unloading that portion of grain designated "weevily" from the lot and an additional amount of other grain in common stowage with the weevily grain as prescribed in instructions issued by the Service; or (ii) completing the loading and treating the grain in the lot, or portion of the lot, in accordance with instructions issued by the Service; or (iii) treating the grain which graded "weevily" for the purpose of destroying the insects, subject to subsequent examination by official personnel, after a time interval prescribed in the instructions issued by the instructions issued by the Service; or (iv) continue loading without treating the grain that graded "weevily," in which event all of the weevily grain in the lot and all other grain in common stowage areas coming into physical contact with the weevily grain shall be certificated as "weevily," in accordance with instructions issued by the Service.

(2) *With treatment.* If the grain is treated with a fumigant(i) in accordance with instructions issued by the Service and (ii) under the supervision of official personnel, the sampling, inspection, grading, and certification of the lot shall continue in the same manner as though the "weevily" condition did not exist.

(g) *Single lot inspection; grain uniform in quality.* The grain in each shiplot offered for inspection shall be sampled in a continuous manner and the resulting samples examined for uniformity of quality. If the grain in the samples is found to be uniform in quality and the grain in the lot is loaded aboard or is unloaded from a ship or other carrier in a reasonably continuous operation, the grain in the lot shall be inspected, graded, and certificated as one lot. (The requirements of this paragraph (g) and paragraph (d) of this § 800.87 with respect to reasonably continuous loading or unloading shall not apply to grain which is at rest in a ship or other carrier when the grain is offered for inspection.)

(h) *Single lot inspection; grain not uniform in quality.* If the grain in a shiplot is found to be not uniform in quality or if the grain is not loaded or unloaded in a reasonably continuous operation, the grain in each portion and the grain which is loaded or unloaded at different times, shall be sampled, inspected, graded, and certificated as separate lots.

(i) *Special certification procedures.* (1) *Single-lot inspection; grain not uniform in quality.* If the grain in a single shiplot is found to be not uniform in quality under paragraph (h) of this § 800.87, the inspection certificate for each different portion shall show (i) a statement that the grain has been loaded on board with grain of other quality; (ii) the grade, location, or other identification and approximate quantity of the grain in the portions; and (iii) such other information as may be required by the regulations and the instructions issued by, or approved in specific cases by, the Service. (The requirements of clause (i) shall not apply to grain that is inspected as it is unloaded from a ship or to portions that are loaded in separate stowage space.)

(2) *Common stowage.* (i) *Without separation.* If the grain in a shiplot is offered for inspection as it is loaded aboard a ship and is loaded without separation in a stowage area with other grain or another commodity, the inspection certificate for the grain in each lot in the stowage area shall show the kind, the grade, if known, and the location of the other grain, or the kind and location of the other commodity in the adjacent lots.

(ii) *With separation.* If separations are laid between the adjacent lots, the inspection certificates shall show the kind of material used in the separations and the locations of the separations in relation to each lot.

(iii) *Exception.* The requirements of this subparagraph (i)(2) shall not be applicable to the first lot in the stowage area unless a second lot has been loaded, in whole or in part, in the stowage area prior to the issuance of the official inspection certificate for the first lot.

(3) *Partial inspection.* If an inbound movement of bulk or sacked grain is offered for inspection as a single lot as the grain is at rest in a ship and the grain is not fully accessible for sampling in a manner prescribed in instructions issued by the Service, a "partial inspection—heavily loaded" certificate shall be issued. A "partial inspection" certification (i) shall be deemed not to meet the mandatory inspection requirements of Section 5 of the Act and (ii) if requested on an outbound movement of shiplot grain, the requests shall be dismissed in accordance with § 800.48(a)(4).

(4) *Part-lot.* If a part of a lot of grain in an inbound carrier or container is removed and a part is left in the carrier or container, the grain shall be inspected and certificated in accordance with the provisions of § 800.85(g).

(5) *Official mark.* If the grain in a single shiplot is inspected for grade as the grain is being loaded aboard a ship or other carrier or container, upon request by the applicant, the following mark shall be shown on the inspection certificate: "Loaded under continuous official inspection." (See § 800.57.)

(j) *Reinspection service and appeal inspection service on a shiplot.* A reinspection service or an appeal inspection service may be obtained on a shiplot or one or more sublots in a shiplot in accordance with §§ 800.125 through 800.130 and 800.135 through 800.140.

(k) *Other certification requirements.* For additional provisions governing the certification of grain in a shiplot, see §§ 800.160 through 800.162. For provisions for the issuance of divided-lot inspection certificates, see § 800.163.

§ 800.88 New inspection.

(a) *Identity lost.* If an original inspection service, reinspection service, field appeal inspection service, or Board appeal inspection service has been performed on an identified lot of grain or container in an agency's or field office's assigned area of responsibility and thereafter the identity of the grain or container is deemed lost, a new original inspection may be requested.

(b) *Identity not lost.* If the identity of the grain or the container is not deemed lost, no new original inspection may be performed on the same identified lot of grain or container in the same specified service point within 5 business days after the last inspection without securing, in advance, the approval of the appropriate field office supervisor.

§ 800.89 When identity of grain or container is deemed lost.

(a) *Lots.* For the purposes of §§ 800.88, 800.126(d), and 800.136(d), the identity of a lot of grain or container shall be deemed lost if (1) a portion of the grain is unloaded, transferred, or otherwise removed from the carrier or container in which the grain was located at the time of the original inspection; (2) a portion of grain or other material, including an insecticide or fumigant, is added to the lot after the original inspection was performed (but see the last sentence of this paragraph (a)); or (3) the stowage area is cleaned, treated, fumigated, or fitted after the original inspection was performed; or (4) the identification of the containers is changed after the original inspection was performed. At the option of the official personnel performing a reinspection service, or field appeal inspection service, or Board appeal inspection service, the identity of grain in a closed carrier or container may also be deemed lost if the carrier or container is not sealed, or if the seal record is incomplete. The provision of subparagraph (2) in this paragraph (a) shall not be applicable to grain treated with a fumigant in accordance with the provisions of this § 800.87(f)(2).

(b) *Submitted samples.* The identity of a submitted sample of grain shall be deemed lost (1) when the identifying number, mark, or symbol for the sample is lost or destroyed or (2) when the sample has not been retained and protected by official personnel in the manner prescribed in § 800.82(c)(2) and in instructions issued by, or approved in specific cases by, the Service.

§§ 800.90–800.94 [Reserved]

WEIGHING PROVISIONS AND PROCEDURES

§ 800.95 Objective of weighing services.

(a) *Objective.* The objective of the official weighing service under the Act is to provide, upon request, impartial and accurate weight information about grain and impartial and accurate quality information about grain carriers and containers in a timely and efficient manner so that grain may be marketed in an orderly and timely manner and trading in grain may be facilitated.

(b) *Definitions.* For the purpose of this § 800.95, unless the context requires otherwise, the following terms shall be construed, respectively, to have the meanings given for them below:

(1) *Impartial information.* Weighing information shall be considered "impartial" if the information is developed independently by official personnel or, if it is not, the weight certificate clearly indicates that fact.

(2) *Accurate information.* Weighing information shall be considered "accurate" if the information (i) is developed in accordance with the methods and procedures prescribed in §§ 800.96 through 800.105 and (ii) truly reflects the quantity of the grain, or the fitness of the carrier or container, at the time the information was developed.

§ 800.96 Methods and order of performing official weighing services.

(a) *Methods.* (1) *General.* All weighing, checkweighing, checkloading, stowage examination, and other weighing services performed under the Act shall be performed with approved weighing equipment in accordance with the procedures prescribed in §§ 800.96 through 800.103 and in the instructions issued by, or approved in specific cases by, the Service.

(2) *Bulk grain.* Except as provided in §§ 800.98(e), 800.99(g)(2), and 800.100(e)(4), weight determinations on the bulk grain in, or to be loaded in, a carrier or container, or a stowage area in a carrier or container, shall be based on an accurate weighing of all of the grain in, or to be loaded, in the carrier, container, or stowage area.

(3) *Sacked grain.* Checkweighing determinations that are based on a sampling and weighing of the grain in an official weight sample shall be based on a proportionate or random sampling of the grain in the entire lot and an accurate weighing of the grain in the sample. If the entire lot is not available or accessible at the time of sampling, the request shall be withheld until the entire lot is available or accessible, or a part-lot certificate shall be issued in accordance with §§ 800.98(e) and 800.100(e).

(4) *Review of weighing.* Determinations in a review of weighing service shall be based on an independent review of the weighing information and procedures. Any difference in results shall be deemed to be a material error and warrant the issuance of a corrected certificate of weight. No administrative, statistical, or other tolerance shall be used or applied in performing a review of weighing service.

(b) *Order of service.* Weighing services under the Act shall be performed insofar as consistent with good management in the order in which the request for the services is received. Precedence shall be given when necessary to requests for mandatory weighings specified in Section 5 of the Act. Precedence may be given to other kinds of weighing services under the Act with the approval of the Service.

(c) *Recording receipt of documents.* Each document submitted by or for an applicant for weighing service shall be promptly stamped or similarly marked by the agency or field office, as applicable, to show the date the document was received.

(d) *Conflict of interest.* (1) *Official personnel.* No official personnel shall perform or participate in performing a weighing service on grain, or a stowage examination on a grain carrier or container, in which they have a direct or indirect financial interest.

(2) *Approved weighers.* Approved weighers may perform specified official Class X and Class Y weighing functions in accordance with Sections 7A and 11(a) of the Act.

§ 800.97 Weighing procedures.

(a) *General.* All balancing of scales, weighing of grain or grain containers, recording of weights, stowage examinations, and related activities shall be performed in accordance with applicable regulations in this Part and instructions issued by, or approved in specific cases by, the Service.

(1) *Official Class X weighing.* Official Class X weighing functions shall be performed in accordance with the provisions of § 800.77(b) and §§ 800.96 through 800.105 and instructions issued by the Service. The functions may be performed by official personnel or may be performed, in part, by approved weighers or other persons employed by, at, or in an approved weighing facility. If the functions are not performed in whole by official personnel, those functions must be completely supervised by official personnel.

(2) *Official Class Y weighing.* Official Class Y weighing functions shall be performed in accordance with the provisions of § 800.77(c) and §§ 800.96 through 800.105 and instructions issued by the Service, and shall be partially or completely supervised by official personnel as specified by the Service.

(b) *Spills of grain.* (1) *Estimating spills.* When feasible, the weight of a grain spill or leak shall be determined by retrieving and weighing the grain; otherwise, the weight shall be determined by (i) using standard estimating formulas for grain volumes or (ii) such other methods as may be prescribed in instructions issued by, or approved in specific cases by, the Service.

(2) *Spills of outbound grain that are replaced.* If a spill occurs in the handling and loading of outbound grain and the spilled grain has retained its

quality and is retrieved, or is replaced in kind and quality, and is loaded on board during the loading operations, the weight certificate shall show the weight of the grain that was physically loaded on board. Upon request of the applicant, a certificate may be issued by the agency or the field office, as applicable, to show the weight of the additional grain that was used to replace a spill.

(3) *Spills of outbound grain that are not replaced.* If a spill occurs in the handling an loading of outbound grain and the spilled grain is not retrieved or is not replaced during the loading operation, the weight certificate shall show the weight of the grain that was actually loaded, excluding the estimated amount of the grain that was spilled. Upon request of the applicant, an additional certificate may be issued showing the estimated estimated amount of grain that was spilled. Further, the applicant may, upon request, have the total amount that was weighed shown on the certificate with the amount of the spill noted in the "Remarks" section of the certificate.

(4) *Spills, or loss of identity of inbound grain.* (i) *Spills.* Except as provided in paragraph (c) of this § 800.97, if a spill or other avoidable loss occurs in the handling of an inbound lot of grain, and is not completely retrieved and weighed as a part of the inbound lot, the weight certificate for the lot shall show the weight of the grain that was actually unloaded from the carrier. A statement shall be placed in the "Remarks" section of the certificate as follows: "The net weight does not include an estimated——pounds that was spilled and not recovered during unloading."

(ii) *Loss of identity.* For the purposes of this § 800.97, the identity of a lot of inbound grain shall be deemed lost if the grain becomes mixed with other grain (other than grain from another identified carrier), related commodities, or other products during the unloading and weighing. When such loss of identity occurs, no amount shall be shown in the "Net Weight" portion of the weight certificate for the lot. If grain from two or more identified carriers or containers becomes mixed, the combined weight of the grain in the carrier or container shall be shown on one certificate.

(c) *Other avoidable losses on inbound grain.* If, after unloading an inbound carrier, quantities of grain remain on the floor that could have been removed with a reasonable effort, the weight of the grain that was actually unloaded from the carrier shall be shown on the weight certificate in accordance with subparagraph (b)(1) of this § 800.97, and a statement shall be placed in the "Remarks" section of the certificate as follows: "The net weight does not include an estimated——pounds of sound grain which the receiver did not make a reasonable effort to remove from the carrier."

§ 800.98 Weighing of bulk grain in land carriers and barges in single lots.

(a) *General.* The weighing of bulk grain loaded aboard, or being loaded aboard, or unloaded from a single truck, trailer, truck/trailer combination, railroad car, river barge (including barges designed to be loaded aboard oceangoing ships or oceangoing barges) or bay boats, and grain in a bin, warehouse, or similar container (excluding ships) shall be conducted in accordance with the provisions in this § 800.98 and such procedures as may be prescribed in instructions issued by, or approved in specific cases by, the Service.

(b) *Single and multiple weighing procedure.* (1) *Single procedure.* If the grain in an inbound carrier or container is offered for inspection service as one lot, and the grain is found to be uniform in condition (see § 800.85(b)(1)), the grain shall be weighed and certificated as one lot. The identification of the carrier or container shall be recorded on the scale tape or scale ticket and the weight certificate.

(2) *Multiple procedure.* If a portion of the grain in an inbound carrier or container is found to be not uniform in condition, and the grain in each portion is unloaded as a separate portion during the same unloading process, the grain in each portion shall be weighed as a separate lot, but the separate lots shall be certificated on one weight certificate. The certificate shall show the weight of each portion, and the location of each portion in the carrier, in accordance with procedures prescribed in the instructions issued by, or approved in specific cases by, the Service. If the grain in each portion is not unloaded as a separate portion, the grain that is unloaded shall be weighed as one lot in accordance with subparagraph (b)(1) of this § 800.98. If only a part of the grain is unloaded, the grain shall be weighed in accordance with paragraph (e) of this § 800.98.

(c) *One certificate per container; exceptions.* Except as provided in this paragraph (c), one official certificate shall be issued for the weighing of the grain in each truck, trailer, truck/trailer combination, railroad car, barge, or similarly sized carrier or container. The requirements of this paragraph (c) shall not be applicable to (1) grain weighed in a combined lot under § 800.99 or (2) grain weighed under subparagraph (b)(2) and paragraphs (d) and (e) of this § 800.98.

(d) *Bulkhead lots.* If the grain in a carrier or container is offered for weighing service as two or more lots and the lots are separated by bulkheads or other partitions, the grain in each lot shall be weighed as a separate lot in accordance with paragraphs (a) and (b) of this § 800.98. An official certificate shall be issued for each lot weighed. Each certificate shall show the term "Bulkhead Lot," the weight of the grain in the lot, and the location of the lot in the carrier or container in accordance with procedures prescribed in instructions issued by, or approved in specific cases by, the Service.

(e) *Part lots.* (1) *Separate lots.* If a portion of a lot of grain in an inbound carrier or container is unloaded, and a portion is left in the carrier or container or is unloaded at a different time, the portion that is removed and the portion remaining in the carrier or container shall, for the purpose of the regulations, be considered separate lots. If weighing service is requested on either portion, the grain shall be weighed and certificated in accordance with subparagraph (b)(2) of this § 800.98, except that a "part-lot" weight certificate shall be issued.

(2) *Part-lot weight certificate.* A part-lot weight certificate shall show (i) the weight of the portion that is unloaded and (ii) in the "Remarks" section of the certificate the statement: "Part-lot: The net weight stated herein reflects a partial unload."

(f) *Identification for compartmented cars.* The identification for a part of a compartmented railroad car shall, in the absence of readily visible markings on the car, be stated in terms of the location of the grain in a compartment or bay, with the first bay at the brake end of the car being identified as B-1, and the remaining compartments or bays being numbered consecutively towards the no-brake end of the car.

§ 800.99 Weighing of grain in combined lots.

(a) *General.* The weighing of bulk or sacked grain, loaded aboard, or being loaded aboard, or unloaded from two or more carriers as a combined lot, shall be in accordance with the provisions of this § 800.99 and such procedures as may be prescribed in instructions issued by, or approved in specific cases by, the Service.

(b) *Definitions.* For purposes of this § 800.99, unless the context requires otherwise, the terms "Combined lot," "Reasonably continuous operation," and "Uniform in quality" shall be construed, respectively, to have the meanings given for them in § 800.86(b).

(c) *Application procedure.* (1) *For weighing during loading or unloading.* Applications for the weighing of grain in combined lots that is to be weighed

during loading or unloading shall (i) be filed in advance of the loading or unloading of any of the grain, (ii) show the estimated quantity of grain that is to be certificated as one lot, and (iii) identify each carrier in which the grain is being loaded or unloaded.

(2) *For recertification service.* Applications for the recertification of grain that has been weighed and certificated as single lots shall (i) be filed within a reasonable time, not to exceed 2 business days after the latest date of weighing of the individual lots and (ii) show the information specified in subparagraph (1) of this paragraph (c). (For recertification provisions for a recertification service, see subparagraph (g)(5) of this § 800.99.)

(d) *Weighing procedure; general.* (1) *Single lot weighing.* Grain that is to be weighed as a combined lot during loading or unloading shall be weighed as follows: (i) the grain shall be weighed in one location, (ii) the grain loaded into or unloaded from each carrier or container must be weighed in accordance with the procedures prescribed in instructions issued by, or approved in specific cases by, the Service, and (iii) in the case of sacked grain, a representative weight sample or samples must be obtained from the grain in each carrier or container unless otherwise specified in instructions issued by, or approved in specific cases by, the Service.

(2) *Weighing recertification service.* Grain that has been weighed and certificated as separate lots may be "weighed" for recertification as a combined lot in accordance with the following procedures: (i) the grain in each component lot must have been weighed in one location, (ii) the originals of the official weight certificates issued for the component lots must be surrendered to the appropriate agency or field office, (iii) the official personnel who issued the weight certificates for the component lots, and the official personnel who issued the weight certificate for the combined lot, must believe that the weight of the grain in the lots has not changed since the time of the component weighings; and (iv) in the case of sacked grain, the weight samples that were used as a basis for the component weighings were representative at the time of the weighings.

(e) *Grain uniform in quality.* If the grain in a combined lot is inspected by official personnel and found to be uniform in quality, the grain in the combined lot may, at the request of the applicant, be weighed and certificated as one lot.

(f) *Grain not uniform in quality.* If the grain in a combined lot is inspected by official personnel and found to be not uniform in quality, the grain nevertheless may, at the request of the applicant, be weighed and certificated as one lot.

(g) *Special certification procedures.* (1) *Grain not accessible.* Any inbound or outbound movement of sacked grain which is offered for weighing must be fully accessible, as required in § 800.46(b)(1).

(2) *Part lot.* If a part of a combined lot of grain in inbound carriers is unloaded and a part is left in the carriers, the grain that is unloaded shall be weighed and certificated in accordance with the provisions in § 800.98(e).

(3) *Official mark.* When grain is weighed as a combined lot in one continuous operation, upon request by the applicant, the following mark shall be shown on the weight certificate: "Loaded under continuous official weighing," or, when applicable, "Loaded under continuous official inspection and weighing." (See § 800.57.)

(4) *Combined-lot certification (general).* Each certificate for a combined-lot weighing service shall show the identification of the "Combined lot," or, at the request of the applicant, the identification of each carrier in the combined lot. The identification and any seal information for the carriers may be shown on the reverse side of the weight certificate provided the statement "See reverse side" is shown on the face of the certificate in the space provided for remarks.

(5) *Combined-lot recertification service.* (For provisions on applying for a weighing recertification service, see subparagraph (c)(2) of this § 800.99.) If the request for a combined-lot weighing service is filed after the grain in the component lots has been weighed and recertificated, recertification of the component lots into a combined-lot weighing certificate shall show: (i) the date of weighing the grain in the combined lot (if the component lots were weighed on different dates, the latest of the dates shall be shown); (ii) a serial number, other than the serial numbers of the weight certificates that are to be superseded; (iii) the name of the elevator from which or into which the grain in the combined lot was loaded or unloaded; (iv) a statement showing the weight of the grain in the conbined lot; (v) a completed statement showing the identification of any superseded certificate as follows: "This combined-lot certificate supersedes certificates Nos. ————, dated ————." If, at the time of issuing the combined-lot weight certificate, the superseded certificates are not in the custody of the applicable agency or field office, the statement "The superseded certificates identified herein have not been surrendered" shall be clearly shown, in the space provided for remarks, beneath the statement identifying the superseded certificates. If the superseded certificates are in the custody of the applicable agency or field office, the superseded certificates shall be marked "Void" in a clear and conspicuous manner. Official personnel shall exercise such other precautions as may be found necessary to prevent the fraudulent or unauthorized use of the superseded certificates.

(h) *Further combining.* After a combined-lot weight certificate has been issued in accordance with this § 800.99, there shall be no further combining and no dividing of the certificate at a later date.

(i) *Limitation.* No combined-lot weight certificate shall be issued (1) for any weighing service other than as described in this § 800.99 or (2) which shows a weight in excess of the weight of the component lots.

(j) *Review of weighing service on combined lots.* A review of weighing service may be obtained on grain in a combined lot in accordance with §§ 800.125 through 800.131.

(k) *Other certification requirements.* For additional provisions governing the certification of grain in a combined lot, see §§ 800.160 through 800.162.

§ 800.100 Weighing of shiplot grain in single lots.

(a) *General.* The weighing of bulk or sacked grain being loaded aboard or unloaded from a ship as a single lot, shall be in accordance with the provisions of this § 800.100 and such procedures as may be prescribed in instructions issued by, or approved in specific cases by, the Service.

(b) *Definitions.* For purposes of this § 800.100 unless the context requires otherwise, the terms "Shiplot grain," "Reasonably continuous operation," and "Uniform in quality" shall be construed, respectively, to have the meanings given for them in §§ 800.86(b) and 800.87(b).

(c) *Application procedure.* Applications for the weighing of shiplot grain that is to be weighed during loading or unloading as a single lot shall (1) be filed in advance of the loading or unloading of any of the grain; (2) show the estimated quantity of grain to be certificated as one lot; and (3) identify the carrier and the stowage area in which the grain is being loaded or from which the grain is being unloaded.

(d) *Weighing procedure; general.* Shiplot grain that is to be weighed as a single lot during loading or unloading shall be weighed in accordance with the following procedure: (1) the grain must be weighed in one weighing location, (2) the grain in each lot must be weighed in accordance with the procedures prescribed in instructions issued by, or approved in specific cases by, the Service, and (3) in the case of

sacked grain, a representative weight sample or samples must be obtained from the grain in each portion that is submitted for weighing as a lot unless otherwise specified in instructions issued by, or approved in specific cases by, the Service.

(e) *Certification of shiplot grain.* (1) *Basic requirement.* The certificate shall show (i) if true, a statement that the grain has been loaded aboard with other grain, (ii) the weight, (iii) the stowage or other identification of the grain, and (iv) such information as may be required by the regulations and the instructions issued by, or approved in specific cases by, the Service.

(2) *Common stowage.* (i) *General.* If bulk grain is offered for weighing as it is being loaded aboard a ship, and is loaded in a stowage area with other grain or another commodity, the weight certificate for the grain in each lot in the stowage area shall show the relative location of the grain.

(ii) *With separation.* If separations are laid between the adjacent lots, the weight certificates shall show the kind of material used in the separations and the location of the separations in relation to each lot.

(iii) *Without separation.* If separations are not laid between the adjacent lots, the weight certificate for each lot shall show that the lot was loaded on board with other grain or another commodity without separation.

(iv) *Exception.* The requirements of this paragraph (2) shall not be applicable to the first lot in the stowage area unless a second lot has been loaded, in whole or in part, in the stowage area prior to the issuance of the weight certificate for the first lot.

(3) *Not accessible grain; sacked grain.* Except as provided in subparagraph (4) of this pargraph (e), if an inbound or outbound movement of sacked grain is offered for weighing and the grain is not fully accessible, the request for weighing service shall be dismissed in accordance with § 800.46(b)(1) on the ground that all the grain is not accessible for weighing.

(4) *Part lot.* If a part of a lot of grain in an inbound carrier or container is unloaded and a part is left in the carrier or container, the grain shall be weighed and certifcated in accordance with the provisions of § 800.98(e).

(5) *Offical mark.* If the grain in a single shiplot is weighed as the grain is being loaded aboard a ship or other carrier or container, and is weighed in one reasonably continuous operation, upon request by the applicant, the following mark shall be shown on the weight certificate: "Loaded under continuous official weighing." (See § 800.57.)

(f) *Review of weighing service on single shiplots.* A review of weighing service may be obtained on grain in accordance with §§ 800.125 through 800.131.

(g) *Other certification requirements.* For additional provisions governing the certification of grain, see §§ 800.160 through 800.162. For provisions for the issuance of divided-lot weight certificates, see § 800.163.

§ 800.101 Official weight sample provisions for checkweighing sacked grain.

(a) *Official weight sample.* (1) *Requirements for weight sample.* A weight sample must be (i) selected from the sacked grain in the lot by official personnel; (ii) representative of the grain in the lot, as specified in paragraph (b) of this § 800.101; (iii) protected from manipulation, substitution, and improper or carless handling, as specified in paragraph (c) of this § 800.101; and (iv) obtained within prescribed geographic boundaries, as specified in paragraph (d) of this § 800.101. Samples that do not meet the requirements of this paragraph (a) shall not be considered official weight samples.

(2) *Prohibitions.* Official weight samples for weighing specified in Section 5 of the act may not be obtained by warehouse samplers or any person other than a licensed or an authorized person.

(b) *Representative sample.* No weight sample shall be deemed representative of a lot of sacked grain unless the sample (1) is of the size prescribed in instructions issued by the Service; (2) has been obtained and weighed in accordance with procedures prescribed in instructions issued by, or approved in specific cases by, the Service; and (3) is otherwise representative of the sacked grain in the lot.

(c) *Protecting samples and data.* Official personnel and other persons employed by agencies or field offices shall protect official weight samples and data from manipulation, substitution, and improper and careless handling which might deprive the sample date of their representativeness.

(d) *Restriction on weighing.* No agency or field office shall checkweigh under the Act any lot of sacked grain unless at the time of obtaining the official weight sample the grain from which the sample was obtained was physically located within the assigned area of responsibility to the agency or field office. Upon request, and a showing of need, the Administrator may grant an exception to this rule on a shipment-by-shipment basis. Information on the exceptions may be obtained in accordance with § 800.10.

(e) *Equipment and labor.* The applicants shall provide the necessary labor for obtaining weight samples and placing them in a position for weighing and shall supply suitable weighing equipment approved by the Service.

(f) *Disposition of official weight samples.* In checkweighing sacked grain in lots, the grain in the official weight samples shall be returned to the lots from which the samples were obtained.

§ 800.102 Checkweighing sampling provisions by level of service.

(a) *Original weighing services.* Each original checkweighing service performed on a lot of sacked grain to determine the weight of the grain shall be made on the basis of one or more official weight samples obtained from the grain by official personnel in accordance with instructions issued by, or approved in specific cases by, the Service.

(b) *Review of checkweighing services.* Each review of checkweighing service performed on a lot of sacked grain shall be made in accordance with the provisions of §§ 800.129 through 800.131.

§ 800.103 Checkweighing sampling provisions by kind of movement.

(a) *"IN" movements.* Each checkweighing on an "IN" movement of grain (see § 800.161(b)(8)) shall be based on an official weight sample obtained while the grain is at rest in the carrier or container, or during unloading, in accordance with procedures prescribed in instructions issued by, or approved in specific cases by, the Service.

(b) *"OUT" movements (export).* Each checkweighing of sacked export grain shall be based on an official weight sample obtained (1) as the grain is being loaded aboard the final carrier, (2) as the grain is being sacked, or (3) while the grain is at rest in a warehouse or holding facility in accordance with instructions issued by the Service.

(c) *"OUT" movements (other than export).* Except as provided in paragraph (b) of this § 800.103, each checkweighing of an "OUT" movement of sacked grain (see § 800.161(b)(8)) shall be based on an official weight sample obtained (1) from the grain as the grain is being loaded aboard the carrier, or (2) while the grain is at rest in the carrier, or (3) while the grain is at rest in a warehouse or holding facility, in accordance with procedures prescribed in instructions issued by, or approved in specific cases by, the Service.

(d) *"LOCAL" inspection.* Each checkweighing of a warehouse lot or "LOCAL" movement of grain (see § 800.161(b)(8)) shall be based on an official weight sample obtained while the grain is at rest in the container, or during unloading, or while the grain is

being transferred, in accordance with procedures prescribed in instructions issued by, or otherwise approved in specific cases by, the Service.

§ 800.104 Restricted weighing activities.

In addition to the activities that are restricted or prohibited by Section 13 of the Act with respect to the weighing of grain, the following activities are also restricted or prohibited:

(a) *Misuse of equipment.* Grain weighing equipment and grain handling systems that relate to the grain weighing operation shall not be operated except in accordance with instructions supplied by the manufacturer of the equipment and instructions issued by the Service.

(b) *Modification of equipment.* Modifications or changes in grain weighing equipment and grain handling systems that relate to the grain weighing operation shall not be made without approval of the appropriate agency or field office in advance of the modification.

(c) *Processing of weighed grain.* (1) *General prohibition.* Except as noted in subparagraph (2) of this paragraph (c), outbound grain that has been weighed under the Act shall be routed directly from the scale to the carrier or container and shall not be cleaned, dried, or otherwise processed to remove or add material en route to the carrier. Inbound grain that is to be weighed under the Act shall be routed directly from the carrier or container to the scale and shall not be cleaned, dried, or otherwise processed to remove or add material en route to the scale.

(2) *Exception.* (i) *Insecticides.* An insecticide may be added to outbound grain after the grain has been weighed under the Act, and may be added to inbound grain before the grain has been weighed under the Act, provided the addition of the insecticide is monitored by official personnel and is noted by such personnel on the appropriate weight documents.

(ii) *Dust.* The routine removal of airborne dust during the handling of grain shall not be deemed to be a removal of material.

(d) *Minimum load.* A motor-vehicle scale shall not be used for weighing any load smaller than 1,000 pounds gross.

(e) *Size requirement.* A motor-vehicle scale shall not be used for weighing a vehicle that is not entirely borne by the scale load-receiving device. If a vehicle is attached to another vehicle, both vehicles must be entirely borne by the load receiving device at the time of weighing.

§§ 800.105–800.114 [Reserved]

ORIGINAL SERVICES

§ 800.115 Who may request original services.

(a) *General.* Original inspection services and Class X and Class Y weighing services may be requested by any interested person who desires the services. (For provisions on the kind of available services, see §§ 800.75 through 800.78. For provisions on obtaining services, see §§ 800.45 and 800.46.

(b) *Regular service.* (1) *Inspection.* A request for original inspection services may be made for (i) one or more identified lots or submitted samples; or (ii) a definite or indefinite number of lots or submitted samples to be shipped from or to a specified location during a specified or indefinite period; or (iii) all lots shipped from or to a specified location, or from or to a specified person.

(2) *Class X weighing.* A request for official Class X weighing services may be made for (i) one or more identified lots; or (ii) a definite or indefinite number of lots to be shipped from or to a specified location during a specified or unspecified period; or (iii) all lots shipped from or to a specified location, or from or to a specified person.

(3) *Class Y weighing.* A request for official Class Y weighing services shall be made for a period of 6 months or longer for (i) all lots shipped from or to a specified location or (ii) all lots shipped from or to a specified location in a specified type of carrier.

(c) *Contract service.* If a contract-type arrangement (sometimes referred to as "guaranteed station") is offered by an agency or the Service, an applicant may enter into the contract-type arrangement with the agency or the Service, as appropriate, for a specified period, whereby (i) the applicant agrees to pay a specified amount as shown in an approved fee schedule and (ii) the agency or the Service, as appropriate, agrees to perform original inspection or Class X or Class Y weighing services during the specified period, as requested by the applicant.

§ 800.116 How to request original services.

(a) *Where to file.* (1) For grain in the United States, a request for an original inspection service other than a submitted sample inspection shall be filed with the inspection agency or the authorized field office that is assigned the area where the grain will be sampled. A request for a weighing service shall be filed with the weighing agency or the authorized field office that is assigned the area where the grain will be weighed.

(2) For U.S. grain in Canadian ports, a request for original inspection or Class X or Class Y weighing service shall be filed with the field office, either in Montreal, P.Q., or at the location where the grain will be sampled or weighed, as applicable.

(b) *Written confirmation.* If a written confirmation is requested by the agency or the field office, as appropriate, the confirmation shall be signed by the applicant or the applicant's agent, and shall, except as provided in paragraph (c) of this § 800.116, show or be accompanied by the following information: (1) the identification, quantity, and the specific location of the grain (if known); (2) the name and mailing address of the applicant; (3) the kind and scope of original inspection service or original weighing service desired; and (4) such other information as may be required in specific cases by the agency or the field office, as appropriate. (Copies of original service request forms will be furnished by an agency or an authorized field office upon request.)

(c) *Delayed information.* If the information specified in paragraph (b) of this § 800.116 is not available at the time of filing the request, the applicant shall submit the information, or cause it to be submitted, as soon as it is available. At the discretion of the agency or the field office, as appropriate, action on the request for original service may be withheld pending the receipt of the required information.

(d) *When to file.* When a request for extensive original inspection service or extensive weighing service is planned, the request should be filed as far in advance of the effective date of the request as possible to permit the agency or the field office, as appropriate, to plan and effect its staffing needs. For grain that is to be inspected or Class X weighed during loading, unloading, or handling, the request must be filed sufficiently in advance of the loading, unloading, or handling to enable official personnel to be present. For grain that is to be inspected at rest in a container, and for a submitted sample, the request may be filed on or prior to the effective date of the request.

(e) *Recording the date of filing.* A request for an original inspection service or a weighing service shall be deemed filed when the request is received by the agency or the field office that will perform the original service: *Provided,* That if no oral or written request is received by the agency or the field office, as appropriate, before the grain is presented or offered for inspection or weighing, the date of filing a request for original inspection service shall be the date the grain is made available for sampling; and the date of filing a request for weighing service shall be the date the grain is made

available for weighing. If a request is made orally, a written record should be made by the receiving agency or field office. Each record of a request shall be stamped or similarly marked by the agency or the field office, as applicable, to show the date the request was filed. A copy of a railroad manifest shall be deemed to meet the requirements of this paragraph (e) for original inspection service on inbound grain in railroad cars.

§ 800.117 Dismissal of requests for original services.

(a) *Grounds for dismissal.* A request for an original inspection service or a weighing service (1) shall be dismissed for the reasons specified in § 800.48 and (2) may be dismissed if the requested original inspection service or the requested weighing service cannot be performed, in whole or in part, within 24 hours after the grain is presented or offered for inspection or weighing.

(b) *Notification.* When a request for an original inspection service or a weighing service is dismissed, the agency or the field office, as appropriate, shall promptly notify the applicant orally or in writing of the reason or reasons for the dismissal.

§ 800.118 Who shall perform original services.

(a) *United States.* Original inspection services in the United States shall be performed by the agency or the field office, as appropriate, that is assigned the area in which the grain will be sampled. Weighing service in the United States shall be performed by the agency or the field office, as appropriate, that is assigned the area in which the grain will be weighed. A list of the assigned areas of responsibility and the agency or the field office that is authorized to perform original inspection service or weighing service in each area may be obtained in accordance with the provisions of § 800.10.

(b) *Canada.* Original inspection services and weighing services with respect to United States grain in Canadian ports shall be performed by the field office that is assigned the area where the grain will be sampled or weighed.

§ 800.119 Issuance and distribution of original service certificates.

For each original inspection service and each weighing service, other than a review of weighing service (see § 800.131), one or more official certificates shall be issued in accordance with § 800.160. The certificate for an original inspection service shall show the term "Original Inspection." The original and a minimum of one copy of each certificate shall be issued to the applicant of record or to the applicant's order; and one copy shall be filed with the agency or the field office, as appropriate, that issued the certificate.

§§ 800.120—800.124 [Reserved]

REINSPECTION SERVICES AND REVIEW OF WEIGHING SERVICES

§ 800.125 Who may request reinspection services or review of weighing services.

(a) *General.* Subject to the limitations in paragraph (c) of this § 800.125, reinspection services or review of weighing services may be requested by any interested person who desires the services. (For provisions on the kind and scope of services, see §§ 800.75 through 800.78. For provisions on obtaining and withholding inspection and weighing services, see §§ 800.45 through 800.51. For provisions and penalties on using false or misleading means in making or filing an application for inspection or weighing services, see Sections 13 and 14 of the Act.)

b. *Kind and scope of request.* The kind and scope of a reinspection service or a review of weighing service shall be limited to the kind and scope of the original inspection service or the Class X or Class Y weighing service on the grain except for inspection services for official criteria which are determined separately from but concurrently with the grading process. However, a reinspection service for official grade shall include a review of all official factors that (1) may determine the grade; or (2) are shown on the certificate for the original inspection service, except as indicated in the provision in this paragraph (b); and (3) are required to be shown on a certificate of grade (see § 800.162). If a request for a reinspection service specifies a different kind or different scope of inspection service than the original service, the request shall be dismissed in accordance with the provisions of § 800.127, or may, with the concurrence of the applicant, be filed as a request for an original inspection service: *Provided,* That reinspection services for official criteria may be considered independent of official factors when determining the kind and scope of the inspection service. Requests for reinspection services for official grade or results for official criteria when the results of both are combined on the certificate may be handled separately if specified in the request by the applicant. A reinspection certificate shall be issued showing the results of the reinspection service along with all results not subject to the reinspection service, in accordance with § 800.130.

(c) *Other limitations.* A reinspection service on a lot or a submitted sample of grain or a review of weighing service on a lot of grain may be requested by one or more interested persons; but only one reinspection service or one review of weighing service may be obtained on a given original inspection service or a weighing service, as applicable. If duplicate requests for a reinspection service or a review of weighing service are filed by two or more interested parties, the first party to file shall be deemed to be the applicant of record. No reinspection service may be obtained on a reinspection service or on an original inspection service on which an appeal inspection service has been performed. No review of weighing service may be obtained on a review of weighing service.

§ 800.126 How to request reinspection services or review of weighing services.

(a) *Where to file.* A request for a reinspection service or a review of weighing service shall be filed with the agency or with the field office that performed the original service. Oral requests shall be confirmed in writing in accordance with paragraph (b) of this § 800.126.

(b) *Written confirmation.* If a written confirmation is requested by the agency or the field office, as appropriate, the confirmation shall be signed by the applicant or the applicant's agent and shall, except as provided in paragraph (c) of this § 800.126, show or be accompanied by the following information or documents: (1) the name and mailing address of the applicant; (2) the names and addresses of the known respondents, if any (if there are no known respondents, the word "None" shall be shown in the space for the names and addresses of the respondents); (3) the identification, quantity, and the specific location of the grain; (4) the original inspection certificate; (5) a statement showing whether a request for a field appeal inspection service on the grain has been filed with the Service and, if such a request has been filed, the place of filing; and (6) such other information as may be required in specific cases by the agency or the field office that performs the reinspection service or a review of weighing service. (Copies of a reinspection service or a review of weighing service request form will be furnished by an agency or a field office upon request.)

(c) *Delayed information.* (1) *Action by applicant.* If the information or documents specified in paragraph (b) of this § 800.126 are not available at the time of the request by the agency or the field office, the applicant shall submit the information or documents, or cause them to be submitted, as soon as they are available. At the discretion of the agency or the field office, as applicable, action on a request for a reinspection service or a review of weighing service may be withheld pending the receipt of the information or documents.

(2) *Record of findings.* In no case shall a reinspection certificate be issued unless the information and documents required by paragraph (b) of this § 800.126 are filed with the agency or field office, or it is found by the agency or field office that some of the information or documents are not available but sufficient information is available to perform the reinspection service. If it is found that any of the required information or documents are not available, a record of the findings shall be included in the record of the reinspection service or the review of weighing service.

(d) *Filing requirements.* (1) *Reinspection service.* A request for a reinspection service shall be filed (i) before the grain or container has left the specified service point where the grain or container was located when the original service was performed; (ii) as promptly as possible but not later than the close of business on the second business day following the date of the original service; and (iii) before the identity of the grain or container has been lost, as specified in § 800.89. (If a representative file sample, as prescribed in § 800.83, is available, the agency or field office, as applicable, that performs the reinspection service may, upon request by the applicant or the respondents, waive the requirements of clauses (i), (ii), and (iii) of this subparagraph (1). The requirement in clause (ii) of this subparagraph (1) may be waived by the agency or the field office, as appropriate, upon a satisfactory showing by an interested person of fraud, or that because of distance or other good cause, the time allowed for filling was not sufficient. A record of each waiver action must be included by the agency or the field office in the record of the reinspection service.)

(2) *Review of weighing service.* A request for a review of weighing service shall be filed as promptly as possible but not later than 90 days after the date of the weighing service.

(e) *Multiple request.* A request for a reinspection service may cover one or more identified lots or samples. A request for a review of weighing service may cover one or more identified lots.

(f) *Recording the date of filing.* A request for a reinspection service or a review of weighing service shall be deemed filed when the request is received by the agency or field office, as applicable. If a request is made orally, a writted record shall be made by the receiving agency or field office. Each record of a request shall be stamped or similarly marked by the agency or the field office, as applicable, to show the date the request was filed.

§ 800.127 When a request for reinspection services or review of weighing services shall be dismissed.

(a) *Grounds for dismissal.* (1) *Reinspection service.* A request for a reinspection service shall be dismissed by an agency or a field office, as applicable, if (i) the kind and scope of the requested reinspection service (see §§ 800.76 through 800.77) are different than the kind and scope of the original inspection service on the grain; (ii) the condition of the grain has undergone a material change since the original inspection service on the grain; (iii) a representative file sample of the grant is not available; (iv) the applicant for the reinspection service requests that a new sample be obtained as a part of the reinspection service, and a new and representative sample cannot be obtained; or (v) a field appeal inspection service has been requested or performed on the original inspection; and (vi) for any of the reasons specified in § 800.48. A request for a reinspection service may be dismissed if the reinspection service cannot be performed, in whole or in part, within 5 business days of the original inspection service.

(2) *Review of weighing service.* A request for a review of weighing service shall be dismissed by an agency or a field office, as applicable, if (i) the request is filed before the results of the weighing service on the grain have been released, (ii) the request is filed more that 90 days after the date of the weighing service, and (iii) for any of the reasons specified in § 800.48.

(b) *Notification.* When a request for a reinspection service or for a review of weighing service is dismissed, the agency or the field office, as appropriate, that dismissed the request shall (1) promptly notify the applicant orally or in writing of the reason for the dismissal and (2) return or release to the applicant or the applicant's agent the original inspection certificate.

§ 800.128 Who shall perform reinspection services or review of weighing services.

A reinspection service or a review of weighing service shall be performed by the agency or the field office that performed the original inpsection service or the Class X or Class Y weighing service, as applicable.

§ 800.129 Provisions governing reinspection services and review of weighing services.

NOTE: For provisions on official inspection and weighing methods and procedures, see §§ 800.80 through 800.89 and 800.95 through 800.104.

(a) *Tolerances.* (1) *Inspection.* For the purpose of this § 800.129 official tolerances for expected variations between inspection services shall be applied to the results of a reinspection service in determining whether the results of the original inspection service on the lot or sample were materially in error. The official tolerances shall in all cases be those set forth in the instructions issued by the Service.

(2) *Weighing.* For the purpose of this § 800.129 any error found as a result of the review of weighing service shall be deemed a material error.

(b) *Conflict of interest.* No official personnel shall perform, or participate in performing or issue a certificate for a reinspection service involving the correctness of an original inspection service performed or certificated by them. However, this restriction may be waived by a regional office if there is only one licensed or one authorized person available at the time and place the reinspection service is performed. A record of each waiver action shall be included by the agency or the field office, as applicable, in the record of the reinspection service.

§ 800.130 Issuance and distribution of reinspection certificates.

(a) *General.* For such each reinspection service, a reinspection certificate shall be issued in accordance with § 800.160. The original and a minimum of one copy of each reinspection certificate shall be issued to the applicant of record or to the applicant's order, one copy shall be delivered or mailed to each respondent of record or to the respondent's order, and one copy shall be filed with the agency or the field office that issued the certificate.

(b) Showing results. (1) *Results within tolerance.* If the results of a reinspection service indicate that none of the corresponding results of the original inspection service is materially in error, the results of the original inspection service and the results of the reinpsection service shall be averaged, and the resulting averages shall be shown on the reinspection certificate.

(2) *Results not within tolerance.* If the results of a reinspection service indicate that all the results of the original inspection service on the grain are materially in error, only the resluts of the reinspection service shall be shown on the reinspection certificate.

(3) *Mixed results.* If the results of the reinspection service indicate that some of the results of the original inspection service were not materially in error and that some of the results were materially in error, the results that were not materially in error shall be shown in accordance with subparagraph (1) of this paragraph (b), and the results that were materially in error shall be shown in accordance with subparagraph (2) of this paragraph (b).

(c) *Required statements.* (1) *Standard statements.* Each inspection certificate shall clearly show, in accordance with § 800.161, the term "Reinspection" and one of the following statments in completed form: (i) "This certificate supersedes Certificate No. ———, dated ———." The above statement shall be shown when the scope of the original inspection service provides for (A) an inspection for grade and official factors (without official criteria), (B) an inspection for one or more official factors (without grade and official criteria), (C) an inspection for one or more official criteria (without grade and official factors), or (D) an inspection for grade, official factors, and official criteria combined; or (ii) "This certificate supersedes Certificate No.———, dated———," followed by one of these applicable statements: (A) "Official criteria results based on the reinspection service; all other results are those of the original inspection service"; or (B) "(Grade and/or official factor) results based on the reinspection service; all other results are those of the original inspection service."

(2) *Other statements.* If, at the time of issuing a reinspection certificate the superseded certificate is in the custody of the issuing agency or field office, the superseded certificate shall be marked "Void" in a clear and conspicuous manner. If the superseded original inspection service certificate is not in the custody of the agency or the field office, as applicable, the following statement shall be clearly shown on the reinspection certificate immediately beneath the statement specified in subparagraph (1) of this paragraph (c): "The superseded certificate has not been surrendered." Official personnel shall diligently exercise such other precautions as may be necessary to prevent the fradulent or unauthorized use of a superseded certificate.

(d) *Use of superseded certificate prohibited.* As of the date of issuance of the reinspection certificate, the superseded original inspection service certificate shall be considered null and void and shall not thereafter be used to represent any grain.

§ 800.131 Reporting results of review of weighing services.

(a) *Correct results.* If the results of a review of weighing service indicate that the results of the weighing service that was in question were correct, the applicant shall be notified in writing that the requested review of weighing service was performed and the results of the weighing service that was in question were found to be correct.

(b) *Incorrect results.* If the results of a review of weighing service indicate that the results of the weighing service that was in question were incorrect, a corrected certificate shall be issued in accordance with the provisions of § 800.165.

§§ 800.132—800.134 [Reserved]

APPEAL INSPECTION SERVICES

§ 800.135 Who may request appeal inspection services.

(a) *General.* Subject to the limitations of paragraph (c) of this § 800.135, a field appeal inspection service or a Board appeal inspection service may be requested by an interested person who desires the service. For provisions and penalties on using false or misleading means in making or filing an application for official inspection or weighing services, see Section 13 and 14 of the Act.

(b) *Kind and scope of request.* (1) *Field appeal inspection service.* A field appeal inspection service shall be limited to the kind and scope of the original inspection service on the grain except for inspection services for official criteria which are determined separately from but concurrently with the grading process. However, a field appeal inspection service for official grade shall include a review of all official factors that (i) may determine the grade; or (ii) are shown on the certificate for the original; inspection or reinspection service, as applicable, except as indicated in the provisions in this paragraph (b); and (iii) are required to be shown on a certificate of grade (see § 800.162). If a request for a field appeal inspection service specified a different kind or different scope of inspection service then the original inspection or reinspection service as applicable, the request shall be dismissed in accordance with the provisions of § 800.137: *Provided,* That field appeals for official criteria may be considered independent of official factors when determining the kind and scope of the inspection service. Request for field appeal inspection services for official grade or results for official criteria when the results of both are combined on the certificate may be handled separtely if specified in the request by the applicant. A field appeal inspection certificate shall be issued showing the results of the field appeal inspection service along with all results not subject to the field appeal inspection service, in accordance with § 800.140.

(2) *Board appeal inspection service.* A Board appeal inspection service shall be based on a review of file samples and shall be limited to the kind and scope of the field appeal inspection service on the grain except for inspection services for official criteria which are not determined during the grading process. However, a Board appeal inspection service for official grade shall include a review of all official factors that (1) may determine the grade; or (ii) are shown on the certificate for the field appeal inspection service, except as indicated in the provisions in this paragraph (b); and (iii) are required to be shown on a certificate of grade (see § 800.162). If a request for a Board appeal inspection service specified a different kind or different scope of inspection service than the field appeal inspection service, the request shall be dismissed in accordance with the provisions of § 800.137: *Provided,* That a Board appeal inspection service for official criteria may be considered independent of official factors when determining the kind and scope of the inspection service. A request for a Board appeal inspection service for official grade or results of official criteria when the results of both are combined on the certificate may be handled separately if specified in the request by the applicant. A Board appeal inspection certificate shall be issued showing the results of the Board appeal inspection service along with all results not subject to the field appeal inspection service, in accordance with § 800.140. A Board appeal inspection service shall not be available on a stowage examination service.

(c) *Other limitations.* (1) *Field appeal inspection service.* A field appeal inspection service on a lot, or a submitted sample of grain, may be requested by one or more interested persons, but only one field appeal inspection service may be obtained on an original inspection service or a reinspection service.

(2) *Board appeal inspection service.* A Board appeal inspection service on a lot, or submitted sample of grain, may be requested by one or more interested persons, but only one Board appeal inspection service may be obtained on a field appeal inspection service.

(3) *Duplicate requests.* If duplicate requests for a field appeal inspection service or a Board appeal inspection service are filed by two or more interested parties the first party to file shall be deemed to be the applicant of record.

(4) *Superseded service.* No appeal inspection service may be performed on an original inspection service or on a reinspection service if the certificate for the original inspection service or the reinspection service has been superseded by another certificate.

§ 800.136 How to request appeal inspection services.

(a) *Where to file.* A request for a field appeal inspection service shall be filed with the field office in the circuit in which the original inspection service or the reinspection service was per-

formed. A request for a Board appeal inspection service shall be filed with the Board of Appeals and Reveiw or with the field office that performed the field appeal inspection service. If the request is made orally, it shall be confirmed in writing, in accordance with paragraph (b) of this § 800.136.

(b) *Written confirmation.* Each request for an appeal inspection service shall be in writing, shall be signed by the applicant or the applicant's agent, and shall, except as provided in paragraph (c) of this § 800.136, show or be accompanied by the following information or documents: (1) the name and mailing address of the applicant; (2) the name and mailing address of each known respondent (If there are no respondents, the word "None" shall be shown in the space for the names and addresses of the respondents.); (3) the identification, quantity, and specific location of the grain; (4) the applicable original inspection, reinspection, or field appeal inspection certificate for the grain; and (5) such other information as may be requested by the field office or the Board of Appeals and Review. (Copies of an appeal inspection service request form will be furnished by a field office upon request.)

(c) *Delayed documents.* (1) *Action by applicant.* If the information or documents specified in paragraph (b) of this § 800.136 are not available at the time of filing a request, the applicant shall submit the information or documents, or cause them to be submitted, as soon as they are available. At the discretion of the field office or the Board of Appeals and Review, as applicable, action on a request for an appeal inspection service may be withheld pending the receipt of the information or documents.

(2) *Record of findings.* In no case shall an appeal inspection certificate be issued unless the information and documents required by paragraph (b) of this § 800.136 are filed in the field office or in the Board of Appeals and Review, as applicable, or it is found by the field office or the Board of Appeals and Review, as applicable, that some of the information or documents are not available but sufficient information is available to perform the appeal inspection service. If it is found that any of the required information or documents are not available, a record of the findings shall be included in the record of the appeal inspection service.

(d) *Filing requirements.* A request for a field appeal inspection service or a Board appeal inspection service shall be filed (1) before the grain or container has left the specified service point where the grain or container was located when the original inspection service, reinspection service, or field appeal inspection service was performed; (2) as promptly as possible, but not later than the close of business on the second business day following the date of the applicable original service, reinspection service, or field appeal inspection service; and (3) before the identity of the grain or the container has been lost, as provided in § 800.89. (If a representative file sample, as prescribed in § 800.83, is available, the field office or the Board of Appeals and Review, as applicable, that performs the appeal inspection service may, upon written request by the applicant, or the respondents, waive the requirement of subparagraphs (1), (2), and (3) of this paragraph (d). The requirement in subparagraph (2) of this paragraph (d) may also be waived by the field office or the Board of Appeals and Review, as appropriate, upon a satisfactory showing by any interested person of fraud, or that on account of distance or other good cause, the time allowed for filing was not sufficient. A record of each waiver action shall be included by the field office or the Board of Appeals and Review, as applicable, in the record of the appeal inspection service.)

(e) *Multiple request.* A request for an appeal inspection service may cover one or more identified lots, samples, or containers. However, upon request of the field office or the Board of Appeals and Review, a separate request shall be filed for each lot or sample.

(f) *Recording the date of filing.* A request for an appeal inspection service shall be deemed filed when the request is received by the field office or by the Board of Appeals and Review. If a request is made orally, a written record shall be made by the receiving field office or the Board of Appeals and Review. Each record of a request shall be stamped or similarly marked by the field office or the Board of Appeals and Review to show the date the request was filed.

§ 800.137 When a request for appeal inspection service shall be dismissed.

(a) *Grounds for dismissal.* A request for an appeal inspection service shall be dismissed by a field office or the Board of Appeals and Review if (1) the kind and scope of the requested appeal inspection service (see § 800.76) is different than the kind and scope of the applicable original inspection service, reinspection service, or appeal inspection service; (2) the condition of the grain has undergone a material change since the applicable original inspection service, reinspection service, or appeal inspection service; (3) a representative file sample of the grain is not available; (4) the applicant for the field appeal inspection service requests that a new sample be obtained as a part of the field appeal inspection service, and a new and representative sample cannot be obtained; or (5) for any of the reasons specified in § 800.48. A request for an appeal inspection service may be dismissed if the appeal inspection service cannot be performed, in whole or in part, within 5 business days of the date of the applicable original inspection service, reinspection service, or field appeal inspection service.

(b) *Notification.* When a request for an appeal inspection service is dismissed, the field office or the Board of Appeals and Review, as applicable, shall (1) promptly notify, or cause to be notified, the applicant orally or in writing of the reasons for the dismissal; and (2) return or release to the applicant or the applicant's agent the applicable original inspection service, reinspection service, or appeal inspection service certificate. When a request for a Board appeal inspection is dismissed, the notice may be issued for the Board of Appeals and Review by the field office that performed the field appeal inspection.

§ 800.138 Who shall perform appeal inspection services.

(a) *Field appeal.* A field appeal inspection service shall be performed by the field office in the circuit in which the original inspection service or reinspection service was performed on the grain.

(b) *Board appeal.* A Board appeal inspection service shall be performed by the Board of Appeals and Review. The field office that performed the field appeal inspection service shall act as a liaison between the Board and the applicant that requests a Board appeal inspection service. The field office shall promptly forward to the Board all available samples, documents, and other information pertaining to the inspection of the grain.

§ 800.139 Provisions governing appeal inspection services.

NOTE.—For provisions on official inspection and weighing methods and procedures, see §§ 800.80 through 800.89.

(a) *Tolerances.* For the purpose of this § 800.139, official tolerances for expected variations between inspection services shall be applied to the results of an appeal inspection service in determining whether the results of the applicable original inspection service, reinspection service, or field appeal inspection service on the lot or sample were or were not materially in error. The official tolerances shall in all cases be those set forth in the instructions issued by the Service.

(b) *Conflict of interest.* No official personnel shall perform, or participate in performing, or issue a certificate for

an appeal inspection service involving the correctness of an original inspection service, a reinspection service, or a field appeal inspection service performed or certificated by them. However, this restriction may be waived by the Service if there is only one authorized person available at the time and place the appeal inspection service is performed. A record of each waiver action shall be included by the field office or the Board of Appeals and Review, as applicable, in the record of the field appeal inspection service or the Board appeal inspection service.

§ 800.140 Issuance and distribution of appeal inspection service certificates.

(a) *General.* For each appeal inspection service, an appeal inspection certificate shall be issued in accordance with § 800.160. The original and a minimum of three copies of each appeal inspection certificate shall be issued to the applicant of record or to the applicant's order; one copy shall be delivered or mailed to each respondent of record or to the respondent's order; one copy shall be delivered to the agency or the field office that performed the original inspection or reinspection service; and one copy shall be filed in the field office or the Board of Appeals and Review, as applicable.

(b) *Showing results.* (1) *Results within tolerance.* If the results of an appeal inspection service indicate that none of the corresponding results of the inspection service in question are materially in error, the results of the inspection service in question and the results of the appeal inspection service shall be averaged, and the resulting averages shall be shown on the appeal inspection certificate.

(2) *Results not within tolerance.* If the results of an appeal inspection service indicate that all the results of the original inspection service, reinspection service, or field appeal inspection service on the lot or sample are materially in error, only the results of the appeal inspection service shall be shown on the appeal inspection certificate.

(3) *Mixed results.* If the results of the appeal inspection service indicate that some of the results of the inspection service in question were not materially in error and that some of the results were materially in error, the results that were not materially in error shall be shown in accordance with subparagraph (1) of this paragraph (b), and the results that were materially in error shall be shown in accordance with subparagraph (2) of this paragraph (b).

(c) *Required statements.* (1) *Standard statements.* Each appeal inspection certificate shall clearly show, in accordance with § 800.161; (i) the term "Field Appeal," or "Board Appeal," as appropriate; and (ii) one of the following statements in completed form: (A) "This certificate supersedes Certificate No.———, dated———." The above statement shall be shown when the scope of the original inspection, reinspection, or field appeal inspection, as applicable, provides for (*1*) an inspection for grade and official factors (without official criteria), (*2*) an inspection for one or more official factors (without grade and official criteria), (*3*) an inspection for one or more official criteria (without grade and official factors), or (*4*) an inspection for grade, official factors, and official criteria combined; or (B) "This certificate supersedes Certificate No.———, dated———," followed by one of these applicable statements: (*1*) "Official criteria results based on the (field appeal inspection or Board appeal inspection); all other results are those of the original inspection, reinspection, or field appeal inspection service"; or (*2*) "(Grade and/or official factor) results based on the (field appeal inspection or Board appeal inspection) service; all other results are those of the (original inspection, reinspection, or field appeal) inspection service."

(2) *Other statements.* (i) If, at the time of issuing an appeal inspection service certificate, the superseded certificate is in the custody of the field office or the Board of Appeals and Review, the superseded certificate shall be marked "Void" in a clear and conspicuous manner.

(ii) If the superseded original inspection service, reinspection service, or field appeal inspection service certificate is not in the custody of the issuing field office or the Board of Appeals and Review, the following statement shall be clearly shown on the appeal inspection certificate immediately beneath the statement specified in subparagraph (1) of this paragraph (c): "The superseded certificate has not been surrendered." Field office and Board of Appeals and Review personnel shall exercise such other precautions as may be necessary to prevent the fraudulent or unauthorized use of a superseded certificate.

(d) *Use of superseded certificate prohibited.* As of the date of issuance of the field appeal or the Board appeal inspection service certificate, as applicable, the superseded original inspection service, reinspection service, or field appeal inspection service certificate shall be considered null and void and shall not thereafter be used to represent any grain.

(e) *Finality of Board appeal inspection service.* A Board appeal inspection service shall be the final appeal inspection service under the Act.

§§ 800.141—800.144 [Reserved]

OFFICIAL RECORDS AND FORMS (GENERAL)

§ 800.145 Official records that are required to be kept.

(a) *Agencies.* Subject to the provisions of paragraph (g) of this § 800.145, each agency shall keep and make available to each of its licensees a complete file and record of (1) the Act, the regulations, the standards, and the instructions issued to the agency by the Service, as specified in § 800.148; (2) the delegation or designation of authority issued to the agency by the Service, as specified in § 800.149; (3) the organization and staffing; (4) the licenses issued to the employees of the agency or to the warehouse samplers in the areas of responsibility assigned to the agencies, and a listing of approved weighing facilities and approved weighers in the areas of responsibility assigned to the agencies, as specified in § 800.151; (5) the agency's schedules of fees, as specified in § 800.152; (6) the space and equipment used by the agency, as specified in § 800.153; (7) each inspection, weighing, and equipment testing function performed by the agency or by the agency's employees under the Act, as specified in § 800.154; and (8) related information as may be required in instructions issued by the Service, as specified in § 800.155.

(b) *Field offices.* Each field office shall keep and make available to each of its authorized employees a complete file and record of (1) the Act, the regulations, the standards, and the instructions issued to the field office by the Service, as specified in § 800.148; (2) the current fee schedule issued by the Service; (3) the position descriptions or other authorizations of the employees assigned to the field office, a copy of the licenses issued to licensees in the field office's circuit, and a listing of approved weighers in the field office's circuit, as specified in § 800.151; (4) each inspection, weighing, equipment testing, and monitoring function performed by the field office or by employees assigned to the field office, as specified in § 800.154; and (5) related information as may be required in instructions issued by the Service, as specified in § 800.155.

(c) *Contractors.* Each contractor shall keep a complete record of (1) the Act, the regulations, the standards, and the instructions issued to the contractor by the Service, as specified in § 800.148; (2) the contract with the Service, as specified in § 800.149; (3) the licenses issued to the contractor or to the contractor's employees by the Service, as specified in § 800.151; (4) each inspection, weighing, and equipment testing function performed by the contractor or by the contractor's

employees, as specified in § 800.154; and (5) related information as may be required in instructions issued by the Service, as specified in § 800.155.

(d) *Approved scale testing organizations.* Each approved scale testing organization shall keep a complete file and record of (1) the Act, the regulations, and the instructions issued to the organization by the Service, as specified in § 800.148; (2) the notice of approval issued to the organization by the Service, as specified in § 800.149; (3) the scale testers employed by the organization, as specified in § 800.151; (4) each scale testing function performed by the organization on equipment used in weighing under the Act, as specified in § 800.154; and (5) related information as may be required in instructions issued by the Service, as specified in § 800.155.

(e) *Licensees.* Each licensee shall (1) have ready access to a complete file and record of the Act, the regulations, instructions, and such other information as may be required and (2) keep the license issued to the individual by the Service.

(f) *Authorized employees.* Each authorized employee assigned to a field office shall keep those records specified by the Service.

(g) *Preparation and keeping of records.* The records specified in paragraph (a) through (f) of this § 800.145 shall be prepared and kept in such manner and in such order as will facilitate (1) the daily use of records in the administration and enforcement of the Act and in the performance of services under the Act and (2) the review and audit of the records to determine compliance with the Act, the regulations, the standards, and the instructions under the Act.

§ 800.146 Retention periods for official records.

(a) *Regular retention periods.* Except as provided in paragraph (b) of this § 800.146, the records specified in § 800.145 shall be retained in accordance with the following schedule:

KIND OF RECORD AND MINIMUM RETENTION PERIOD

(1) The Act, the regulations, the standards, and instructions issued by the Service (§ 800.148).—Until superseded or revoked, whichever is earlier.

(2) Delegations and designations, contracts, and approvals of scale testing organizations (§ 800.149).—Until superseded, terminated, revoked, or canceled.

(3) Organization, staffing, and budget (§ 800.150).—5 years after the applicable year or 5 years after being superseded, whichever is earlier.

(4) Licenses and authorizations (§ 800.151).—The tenure of the employee.

(5) Fee schedules (§ 800.152).—5 years after the schedule was last used as a basis for assessing fees.

(6) Space and technical equipment (§ 800.153).—5 years after the space was vacated or the equipment was last used.

(7) Inspection, weighing, and equipment testing and monitoring records (other than file samples) (§ 800.154).—5 years after the inspection, weighing, equipment testing, or monitoring function was completed (but see paragraph (b) of this § 800.146).

(8) File samples (by type of carrier or container) (§ 800.154).—Minimum retention period (calendar days) after the official function was completed (but see paragraph (b) of this § 800.146).

(i) Trucks: In 3; Out 5.
(ii) Railcars: In 5; Out 10.
(iii) Barges (river): In 5; Out 25.
(iv) Ships and Barges (lake or ocean): In 5; Out (domestic) 25; Export (sublot samples) 60.
(v) Bins and tanks 3.
(vi) Submitted samples 3.

For good cause shown, upon request by an agency and with the approval of the Service, specified file samples or classes of file samples may be retained for agreed shorter periods of time.

(9) Related information (§ 800.164).—5 years after the last applicable year.

(b) *Special retention periods.* (1) *Mandatory.* In specific instances, the Administrator may require an agency, field office, contractor, or approved scale testing organization to retain (i) file samples for a period of not more than 90 days or (ii) other records for a period of not more than 3 years in addition to the 5-year retention period. Notice of such longer retention periods will be given by the Administrator to the appropriate agency, field office, contractor, or approved scale testing organization.

(2) *Permissive.* Records, including file samples, may be kept for longer periods of time than the prescribed retention period at the option of the agency, the field office, the contractor, the approved scale testing organization, or the individual maintaining the records.

§ 800.147 Availability of official records.

(a) *Availability to officials.* Each agency, field office, contractor, approved scale testing organization, licensee, and authorized employee of the Service shall permit authorized representatives of the Comptroller General, the Secretary, or the Administrator to have access to, and to copy, without charge, during customary business hours, any records which such agency, field office, contractor, approved scale testing organization, licensee, and authorized employee of the Service is required to maintain under § 800.145.

(b) *Availability to the public.* (1) *General records.* The following official records will be available, upon request by any person, for inspection and copying during customary business hours: (i) copies of the Act, the regulations, the standards, and instructions issued by the Service under the Act as specified in § 800.148; (ii) the delegation, designation, contract, and approval records specified in § 800.149; (iii) the organization and staffing records specified in § 800.150; (iv) the licenses, authorizations, and approval records specified in § 800.151; and (v) the schedule of fee records specified in § 800.152.

(2) *Records of the Service.* Records of the Service, other than the records identified in this paragraph (b), are available for inspection and copying in accordance with (i) the regulations of the Secretary of Agriculture, Title 7, Part 1, Subpart A, of the Code of Federal Regulations (7 CFR 1.1-1.16) and Appendix A thereto, and (ii) the Freedom of Information Act (5 U.S.C. 552(a)(3)).

(c) *Locations where records may be examined or copied.* (1) *Agency, contractor, and approved scale testing organization records.* Records of agencies and their licensed employees, contractors, and approved scale testing organizations that are available for public inspection may be inspected and copied during regular working hours at the principal place of business of the agency, contractor, or scale testing organization.

(2) *Service records.* Records of the Service that are available for public inspection and copying may be inspected and copied in the applicable field office, regional office, or headquarters office of the Service, U.S. Department of Agriculture (USDA), at 14th and Independence Avenue, S.W., Washington, D.C. 20250, during regular working hours, Monday through Friday, except holidays.

§ 800.148 Records on the Act, regulations, standards, and instructions issued by the Service under the Act.

(a) *The Act.* The complete record of the Act consists of a copy of the wording of the Act, with amendments, if any.

(b) *The regulations.* The complete record of the regulations consists of a copy of the wording of (1) the regulations as set forth in Parts 800, 802, and 803 of this chapter; (2) the Rules of Practice Governing Informal Proceedings, as set forth in Part 808 of this chapter; and (3) all amendments issued thereto.

(c) *The standards.* The complete record of the standards consist of a copy of the wording of (1) the Official U.S. Standards for Grain as set forth in Part 801 of this chapter and (2) all amendments issued thereto.

(d) *The instructions.* The complete record of the instructions consists of a copy of (1) each current notice, instruction, or handbook issued by the Service and (2) a current checklist

showing the current notices, instructions, and handbooks.

§ 800.149 Records on delegations, designations, contracts, and approvals of scale testing organizations.

(a) *Delegations.* The complete record of a delegation under Sections 7 or 7A of the Act consists of a copy of the current delegation and all amendments thereto.

(b) *Designations.* The complete record of a designation for the conduct of official functions under Sections 7 or 7A of the Act consists of a copy of the current designation and all amendments thereto.

(c) *Contracts.* The complete record of a contract consists of a copy of the current contract with the Service and all amendments thereto.

(d) *Approvals.* The complete record of an approval of a scale testing organization under Section 7B of the Act consists of a copy of notice of approval from the Service.

§ 800.150 Records on organization, staffing, and budget.

(a) *Organization.* The complete record of the organization of an agency or contractor must show the current information specified in § 800.198.

(b) *Staffing.* The complete record of staffing must show (1) the name of each current employee, (2) the employee's principal duty, (3) the employee's principal duty station, (4) the training that the employee has received in accordance with Section 8(g) of the Act, and (5) related information that may be required by the Service.

(c) *Budget.* The complete record of the budget must show for the current year the actual income and the actual expenses. Complete accounts for the receipts for inspection, weighing, equipment testing, and related services; the sale of grain samples; and the disbursements from such receipts and such other records as may be needed shall be available for use in establishing or revising fees for inspection, weighing, and equipment testing services under the Act. The records shall include such other information on the disposition of grain samples obtained under the Act as may be prescribed in instructions issued by the Service.

§ 800.151 Records on licenses, authorizations, and approvals.

(a) *Licenses.* The complete record of licenses consists of current information showing (1) the name of each licensee; (2) the scope of each license; (3) the termination date of each license; (4) the original license; and (5) related information that may be required by the Service.

(b) *Authorizations.* A complete record of authorizations consists of current information showing (1) the name of each authorized employee and (2) the position description or other authorization for each employee.

(c) *Approvals.* A complete record of approvals of weighers consists of current information showing the name of each approved weigher employed by, in, or at a specific approved weighing facility.

§ 800.152 Records on fee schedules.

The complete record on fee schedules includes (1) a copy of the current fee schedule as identified in § 800.70; (2) in the case of agencies, data showing how the fees in the schedule were developed; (3) superseded fee schedules as specified in § 800.146; and (4) related information that may be required by the Service.

§ 800.153 Records on space and equipment.

(a) *Space.* The complete record on space must show (1) a description of the space that is occupied or used at each location; (2) the name and address of the owner of the space; (3) the financial arrangements for the space; and (4) related information that may be required by the Service.

(b) *Equipment.* The complete record on equipment must show (1) the description of each piece of equipment used in performing official inspection or official Class X or Class Y weighing functions under the Act, (2) the location of the equipment, (3) the name and address of the owner of the equipment, (4) the schedules for testing the equipment under Section 7B of the Act and § 800.218, (5) a record of the testing and the results of the testing, and (6) related information that may be required by the Service.

§ 800.154 Records on official inspection, weighing, equipment testing, and monitoring functions.

(a) *Detailed work records.* (1) *General.* Detailed work records must be prepared for all inspection, weighing, and equipment testing and monitoring functions performed under the Act. The records must (i) be on standard forms prescribed in the instructions issued by, or approved in specific cases by, the Service; (ii) be written or printed in English; (iii) be concise, complete, accurate, and clearly legible; (iv) show the information and data that are needed for preparing the corresponding official certificate or official report; (v) show the name or initials of the individual who made each of the determinations; (vi) show such additional information as needed by the agency or the Service in performing monitoring, supervision, and regulatory activities; in answering trade inquiries; and in investigating trade complaints; and (vii) show related information that may be required by the Service.

(2) *Use of work records.* Work records shall be used by official personnel (i) as a basis for issuing official certificates or official forms; (ii) in approving or not approving the use of inspection and weighing equipment for the performance of official inspection or official Class X or Class Y weighing functions; (iii) in performing monitoring, supervision, and regulatory activities; (iv) in answering inquiries from interested persons; (v) in processing trade and other complaints; (vi) for billing and accounting, and (vii) for related purposes. The records may be used in reporting the results of official inspection or weighing functions in writing in advance of, or in addition to, the issuance of official certificates.

(3) *Furnishing standard forms.* The following standard forms are required and will be furnished by the Service at no cost to an agency: Official Export Grain Inspection and Weight Certificates, Official Export Grain Inspection Certificates; official inspection logs, official weight loading logs, official scale testing reports, and official volume of work reports. All other forms used by an agency in the performance of official functions, including certificate forms, will be furnished by the agency. All forms used by field offices will be furnished by the Service.

(b) *Inspection work records.* (1) *Pan tickets.* The record for each kind of official inspection service identified in § 800.76 shall, in addition to the official certificate, include one or more pan tickets as prescribed in instructions issued by the Service. (A sample pan ticket form may be obtained from any field office.) Activities which during the course of inspection are performed in a series, such as sampling and grading, may be recorded on one pan ticket or on separate pan tickets, as convenient. However, if the request for inspection has been withdrawn or dismissed, no pan ticket shall be issued or released to the applicant. The original pan ticket shall be retained by the agency or the field office that performed the inspection.

(2) *Inspection logs.* In addition to the pan ticket identified in subparagraph (1) of this paragraph (b), the record for official inspection services that are performed on grain in a combined lot (see § 800.86) and on shiplot grain (see § 800.87) must include the official inspection log as prescribed in instructions issued by the Service. (Copies of the inspection log may be retained by the agency or field office.) The original inspection log shall be retained by the agency or field office that performed the inspection. If the inspection is performed by an agency,

two copies of the inspection log shall be promptly sent to the appropriate field office.

(3) *Other forms.* Each detailed test, including but not limited to official factor and official criteria determinations which cannot be completely recorded on a pan ticket or an inspection log, shall be recorded in a concise, complete, accurate, and clearly legible manner on such other forms as may be prescribed in instructions issued by, or approved in specific cases by, the Service. If the space on a pan ticket or an inspection log does not permit showing the full name for an official factor or an official criteria, abbreviations may be used. (A list of approved abbreviations may be obtained, upon request, from any field office.)

(4) *File samples.* (i) *General.* The record for official inspection services that are based, in whole or in part, on an examination of the grain in a sample includes one or more file samples, as prescribed in instructions issued by the Service.

(ii) *Size.* Each file sample consists of an unworked portion. Each file sample shall be of such size as will permit a reinspection, field appeal inspection, field monitoring inspection, Board appeal inspection, or Board monitoring inspection for the kind and scope of inspection for which the sample was obtained. (In the case of a submitted sample inspection, if an undersized sample is received for inspection, the entire sample shall be retained.)

(iii) *Method.* Each sample shall be retained in such manner as will retain the representativeness of the sample from the time it is obtained or received by the agency or field office until it is discarded. High moisture samples, infested samples, and other problem samples shall be retained in accordance with the instructions issued by the Service.

(iv) *Uniform system.* To facilitate the use of file samples, agencies and field offices shall establish and maintain a uniform file sample system in accordance with instructions issued by the Service. The instructions may prescribe the kind and size of the file sample containers, the method of identification, and methods for retaining the representativeness of the samples.

(v) *Forwarding samples.* Upon request by a field office or the Board of Appeals and Review, a file sample retained by an agency or by a field office shall be furnished to the requesting field office or to the Board of Appeals and Review for a field appeal inspection, a field monitoring inspection, a Board appeal inspection, or a Board monitoring inspection. If a sample is forwarded by an agency to a field office, or by a field office to the Board of Appeals and Review, no portion of the sample need be retained by the agency or the field office that forwarded the sample. The cost of locating the sample shall be borne by the forwarding agency or field office. The cost of containers and mailing shall be borne by the Service. When a file sample is used for a field appeal inspection, or a field monitoring inspection, the field office or the Board of Appeals and Review, as applicable, shall thereafter have the responsibility for maintaining the sample.

(c) *Weighing work records.* (1) *Scale ticket, scale tape, or other weight record.* The record for each official Class X or Class Y weighing service identified in § 800.77 shall, in addition to the official certificate, include a scale ticket, a scale tape, or other weight record as prescribed in instructions issued by the Service.

(2) *Weighing logs.* In addition to the scale tickets, scale tape, or other weight record identified in subparagraph (1) of this paragraph (c), the record for official Class X or Class Y weighting services that are performed on bulk grain in a combined lot (see § 800.99) and bulk shiplot grain (see § 800.100) shall include official weighting logs as prescribed in instructions issued by the Service.

(d) *Equipment testing work records.* The record for each official equipment testing function shall include an official equipment testing report prescribed in instructions issued by the Service. Upon completion of an official equipment test, one or more copies of the completed testing report may, upon request of the owner or operator of the equipment, be issued to the owner or operator or to the owner's or operator's order. The testing report must show (1) the date the test was made; (2) the name of the organization that performed the test; (3) the names of the personnel who performed the test; (4) the names of the Service presonnel who monitored the performance of the test; (5) the identification of the equipment that was tested; (6) the results of the test; (7) the names of the interested persons who were informed of the results of the test; (8) the number or other identification of the approval tag or label, or the noncompliance tag or label that was affixed to the equipment; and (9) other information that may be required by the Service.

(e) *Monitoring records.* The complete record on monitoring shall show (1) the names of the official personnel who performed the monitoring, (2) the time and place of the monitoring, (3) the kind of official function that was monitored, (4) the names of the official or approved personnel whose work was monitored, (5) the results of the monitoring function, and (6) related information that may be required by the Service.

§ 800.155 Related official records.

(a) *Volume of work report.* Each agency and each field office shall prepare a periodic report showing the kind and the volume of inspection and weighing services performed by the agency or the field office, as applicable. The report shall be prepared and copies shall be submitted to the Service in accordance with instructions issued by the Service.

(b) *Record of withdrawals and dismissals.* Each agency and each field office shall maintain a complete record of (1) the requests for inspection or weighing services that are withdrawn by an applicant pursuant to § 800.47, (2) the requests for inspection or weighing services that are dismissed by the agency or field office pursuant to § 800.48, and (3) the requests for inspection or weighing services that are conditionally withheld by the agency or field office pursuant to § 800.49. The record shall be prepared and maintained in accordance with instructions issued by the Service.

(c) *Certificate record.* Each agency and each field office shall maintain a complete record of the certificates that are (1) received by the agency or field office; (2) the special design certificates, if any, that are printed for use by the agency or field office; and (3) the certificates that are issued by the agency or the field office. The record shall show the serial numbers of the certificates that are on hand and shall include a copy of each certificate that is issued, voided, or otherwise used. The record shall show related information that may be required by the Service.

(d) *Warehouse samplers' record.* Each warehouse sampler shall maintain the records prescribed in § 800.145(e) and other records and reports pertaining to the warehouse sampler functions that may be required by the Service.

§§ 800.156—800.159 [Reserved]

OFFICIAL CERTIFICATES

§ 800.160 Official certificates; issuance and distribution.

(a) *Required issuance; individual certificates.* Subject to the provisions of §§ 800.76(f)(2) and 800.77(f)(2) and paragraph (b) of this § 800.160, an official inspection certificate shall be issued to show the results of each kind and each level of inspection service, and an official weight certificate shall be issued to show the results of each kind of Class X or Class Y weighing service performed under the Act.

(b) *Permissive issuance; combination certificates for export cargo grain.*

(1) *Issuance.* Upon request by an applicant and subject to the provisions of subparagraph (2) of this paragraph (b), a combination export inspection and weight certificate may be issued for an original official sample-lot inspection service (of any scope) and an official Class X weighing service for a given lot of export cargo grain, provided the inspection and weighing services are performed by one agency or one field office at one location and at one time.

(2) *Surrender of combination certificates.* If a reinspection service or a field appeal inspection service is requested with respect to any of the inspection results shown on a combination certificate for export cargo grain, (i) the combination certificate for export cargo grain shall be surrendered to the issuing agency or to the issuing field office; (ii) a new export inspection certificate shall be issued by the agency or the field office, as applicable, for the official sample-lot inspection service; (iii) a new export weight certificate shall be issued for the official Class X weighing service; and (iv) each of the new certificates shall clearly show the following statement in completed form: "This certificate supersedes, in part, export certificate No. ———, dated ———."

(3) *Marking surrendered certificate.* If at the time of issuing the new export certificates the superseded combination certificate for export cargo grain in the custody of the agency or the authorized field office, as applicable, the superseded combination certificate shall be marked "Void" in a clear and conspicuous manner.

(4) *Statement to be shown on new certificates.* If the superseded combination certificate for export cargo grain is not in the custody of the agency or the authorized field office, as applicable, the following statement shall be clearly shown on the new export certificate immediately beneath the statement specified in subparagraph (3) of this paragraph (b): "The superseded export certificate has not been surrendered." Official personnel shall diligently exercise such other precautions as may be necessary to prevent the fraudulent or unauthorized use of a superseded export certificate.

(5) *Use of superseded combination certificate for export cargo grain prohibited.* As of the date of the issuance of the new export certificates, the superseded combination certificate for export cargo grain shall be considered null and void and shall not thereafter be used to represent any grain.

(c) *Distribution; general.* (1) *General.* (i) *Nonexport.* The original and a minimum of one copy of each official certificate shall, except as provided in subparagraphs (2) and (3) of this paragraph (c), be delivered or mailed to the applicant of record or to the applicant's order, and one copy shall be retained by the issuing office that performed the inspection or the weighing service. In the case of a reinspection, field appeal inspection, or Board appeal inspection, one copy of each certificate shall also be delivered or mailed to each respondent of record or to the respondent's order.

(ii) *Export.* The original and three copies of each official certificate shall, except as provided in subparagraph (3) of this paragraph (c), be delivered or mailed to the applicant of record or to the applicant's order, and one copy shall be retained by the issuing office that performed the inspection or the weighing service. In the case of a reinspection, field appeal inspection, or Board appeal inspection, one copy of each certificate shall also be delivered or mailed to each respondent of record or to the respondent's order. A copy of each Board appeal inspection certificate shall be delivered to the agency or the field office that performed the original inspection service or the reinspection service.

(2) *Trucklot grain.* In the case of inbound trucklot grain, the official Class X or Class Y weight certificate, as applicable, shall be delivered or mailed to the applicant of record or to the applicant's order. A copy of the weight certificate shall be delivered by the applicant to the driver of the truck or mailed to the person who owned the grain at the time of delivery.

(3) *Additional copies.* Upon request, additional copies of an official certificate shall be furnished to the applicant, a respondent, or other interested person. Fees for extra copies may be established by an agency in accordance with § 800.70. Fees for extra copies furnished by a field office of the Board of Appeals and Review shall be in accordance with § 800.72.

(d) *Prompt issuance.* (1) *General requirement.* The original of each certificate and the copies for the respondents, if any, shall, except as provided in subparagraphs (2) and (3) of this paragraph (d), be issued on the date the inspection or the weighing service, as applicable, was performed. If a combination inspection and weight certificate is issued for export cargo grain, the original and the copies of the certificate shall be issued on the date the inspection and the weighing services were completed.

(2) *Exception when results have been reported.* If the results of an inspection or weighing service have been reported or released to an applicant on or before the date prescribed in subparagraph (1) of this paragraph (c), the certificate and the copies may be issued not later than the close of business on the next business day following the date prescribed in subparagraph (1) of this paragraph (d). Upon request by an agency or a field office, the requirements of this subparagraph (2) may be waived by the Service on a case-by-case basis.

(3) *Exception when divided-lot certificates have been requested.* In the case of export cargo grain, the distribution of the original and the copies of an export certificate shall be withheld if a request for a divided-lot certificate is received by the issuing agency, field office, or Board of Appeals and Review before the issuance of the export certificate.

(e) *Who may issue official certificates.* Subject to the provisions of paragraph (f) of this § 800.160:

(1) *Authority.* Certificates for inspection or weighing services performed under the Act may, except as provided in subparagraph (2) of this paragraph (e), be issued by official personnel who are licensed or authorized to perform and to certify the results of the service reported on the certificates.

(2) *Restriction.* Only an official inspector may issue an official certificate which shows an official grade determination. Only an official weigher may issue an official certificate which shows an official Class X or Class Y weight.

(3) *Prohibition.* No person shall issue an official certificate unless he/she is licensed or authorized to do so.

(f) *Who should issue certificates.* (1) *General.* The licensed or authorized person who is in the best position to know whether an inspection or a weighing service has been performed in an approved manner and whether the final determinations are accurate and true should issue the certificate for the service. For example, if an inspection or a weighing service is performed, in whole or in part, by one licensed or one authorized person, the certificate should be issued by that person.

(2) *Team activities.* If an inspection or a weighing service is performed by two or more official personnel, the certificate should be issued by the person who made the final inspection or the final weighing determination.

(3) *Issuance by supervisory personnel.* Nothing in this paragraph (f) shall preclude a supervisory inspector, supervisory weigher, chief inspector, chief weighmaster, or field office supervisor from issuing an official certificate if the person is licensed or authorized to do so and has determined that the facts stated on the certificate are true.

(g) *Name requirement.* (1) *General.* The name or the signature of the person who issues an official certificate shall, except as specified in subparagraph (2) of this paragraph (g), be shown on the original of each certifi-

cate. The name shall be shown on each copy.

(2) *Exception.* Both the name and the signature of the person who issues an export certificate shall be shown on the original of the export certificate. Upon request of an applicant, both the name and the signature of the person who issues a certificate other than an export certificate shall be shown on the original of the certificate.

(3) *Copies.* If the original of a certificate is signed, either the name or a facsimile of the signature shall be shown on each copy of the certificate.

(h) *Authorizations to affix names.* (1) *Requirements for authorizations.* The name, the signature, or both, of a licensed or authorized person may, subject to the provisions of paragraph (g) of this § 800.160, be affixed to official certificates by a duly authorized agent if (i) the agent is employed by the agency or the Service; (ii) the agent has been designated by an agency or a field office as an authorized agent for the affixing of names or signatures, or both; (iii) a power of attorney authorizing the affixing of a name or signature has been issued to each agent by the licensed or authorized person whose name or signature, or both, are affixed by the agent; (iv) if the agent is employed by an agency, the original or a true copy of the designation, and of the power of attorney, are on file in the office of the agency, and true copies are on file in the appropriate field office; (v) if the agent is employed by the Service, the original or a true copy of the designation by the field office, and of the power of attorney, are on file in the field office; and (vi) each certificate prepared by an agent is prepared from an official work record which has been personally signed or initialed by the licensed or the authorized person whose name or signature is shown on the certificate.

(2) *Initialing.* When a name or signature, or both, of a licensed or an authorized person is affixed to an official certificate by an authorized agent, the initials of the given names and surname of the authorized agent shall be shown on the certificate immediately below or following the name or signature, or both, of the licensed or authorized individual.

(i) *Advance information.* Upon request of an applicant, all or any part of the contents of an official certificate may be telecopied, telegraphed, or telephoned to the applicant, or to the applicant's order, at the applicant's expense. Upon request of a respondent or other interested person, all or any part of the contents of an official certificate may be telecopied, telegraphed, or telephoned to the respondent, or to the respondent's order, or to the other interested person at the respondent's or the other person's expense, as applicable.

(j) *Certification, when prohibited.* No official certificate shall be issued after the corresponding request for an inspection or weighing service under the Act has been withdrawn by the applicant or dismissed by an agency, a field office, or the Board of Appeals and Review.

§ 800.161 Official certificates; general requirements.

(a) *General.* Official certificates shall, except as provided in subparagraph (d)(2) of this § 800.161, (1) be on standard printed forms prescribed in instructions issued by the Service; (2) be in English; (3) be typewritten or handwritten in ink and be clearly legible; (4) show the results of inspection or weighing services in a uniform, accurate, and concise manner; (5) show the information required by §§ 800.161 through 800.166; and (6) show only such other information and statements of fact as are shown in instructions issued by, or approved in specific cases by, the Service.

(b) *Required statements and information.* Each original and each copy of an official certificate shall show the following statements or information, as appropriate:

(1) *Captions.* (i) *Combination certificate for export cargo grain.* The caption "Official Export Grain Inspection and Weight Certificate" for a combination certificate that shows the results of an official sample-lot inspection service and an official Class X weighing service on export cargo grain.

(ii) *Combination domestic certificate.* The caption "Official Grain Inspection and Weight Certificate" for a combination certificate that shows the results of an official sample-lot inspection service and an official Class X weighing service on domestic grain.

(iii) *Export inspection.* The caption "Official Export Grain Inspection Certificate" for a certificate that shows the results of an official sample-lot inspection service on export grain.

(iv) *Export or domestic weighing.* The caption "Official Grain Weight Certificate" for a certificate that shows the results of an official Class X weighing service.

(v) *Domestic Class Y weighing.* The caption "Supervision of Grain Weight Certificate" for a certificate that shows the results of an official Class Y weighing service, including an official checkweighing service or an official checkloading service on other than export grain.

(vi) *Domestic inspection.* The caption "Official Grain Inspection Certificate" for a certificate that shows the results of an official sample-lot inspection service on other than export grain.

(vii) *Warehouseman's sample inspection.* The caption "Official Certificate—Warehouseman's Sample-Lot Inspection" for a certificate that shows the results of a warehouseman's sample-lot inspection service.

(viii) *Submitted sample inspection.* The caption "Official Certificate—Submitted Sample Inspection" for a certificate that shows the results of a submitted sample inspection service.

(ix) *Sampling service.* The caption "Official Sample Certificate" for a certificate for an official sample service.

(x) *Stowage examination.* The caption "Official Stowage Examination Certificate" for a certificate that shows the results of a stowage examination or a carrier condition report.

(2) *Name.* The name of the issuing agency, field office, or Board of Appeals and Review, as applicable, and the name "Federal Grain Inspection Service" if the certificate is issued by a delegated agency, field office, or Board of Appeals and Review.

(3) *Kind and level of service.* Information showing whether the certificate represents an original inspection, reinspection, field appeal inspection, Board appeal inspection, Class X weighing, or Class Y weighing service.

(4) *Original or copy.* Information showing whether each original and each copy of a certificate is an original or a copy. (See paragraph (d) of this § 800.161.)

(5) *Certificate number.* The serial number of the certificate, together with the lettered prefix assigned by the Service to (i) the designated agency, (ii) the delegated agency, or (iii) the Service. The prefix and the number shall, except on divided-lot, duplicate, and corrected certificates, be preprinted on the certificate. The requirement with respect to the lettered prefix may be waived by the Service for special design weight certificates. (See paragraph (d) of this § 800.161.)

(6) *Location of issuing office.* The name of the city, town, port, or other location, and the State where the certificate is prepared and issued.

(7) *Date of service.* The date the inspection or weighing service was performed, in accordance with § 800.1(b). No certificate shall be predated or postdated.

(8) *Kind of movement.* Information showing whether the certificate represents an "IN", "OUT", or "LOCAL" movement. (This requirement is not applicable to certificates which represent submitted sample inspection, sampling, or stowage examination services.) An "IN" movement shall be deemed to be a movement of grain into an elevator, or into or through a city, town, port, or other location

without a loss of identity. An "OUT" movement shall be deemed to be a movement of grain out of an elevator, or out of a city, town, port, or other location. A "LOCAL" movement shall be deemed to be a bin run or similar in-house movement. Grain at rest in bins, tanks, or similar containers shall be considered to be a "LOCAL" movement.

(9) *Certification.* A statement showing that the certificate is issued under the authority of the United States Grain Standards Act, as follows:

(i) For a combination export certificate that shows the results of an official sample-lot inspection service and an official Class X weighing service for export cargo grain: "I certify that I am licensed or authorized under the United States Grain Standards Act (7 U.S.C. 71 *et seq.*) to inspect and weigh the kind of grain covered by this certificate, and that on the above date, the following identified grain was inspected and weighed under the Act, with the following results:"

(ii) For a certificate that shows the results of official inspection services other than official sample-lot inspections: "I certify that I am licensed or authorized under the United States Grain Standards Act (7 U.S.C. 71 *et seq.*) to perform the inspection service covered by this certificate, and that on the above date, the following identified service was performed under the Act, with the following results:"

(iii) For a certificate that shows the results of an official Class X weighing service: "I certify that I am licensed or authorized under the United States Grain Standards Act (7 U.S.C. 71 *et seq.*) to weigh the kind of grain covered by this certificate, and that on the above date, the following identified grain was weighed under the act, with the following results:"

(iv) For a certificate that shows the results of an official Class Y weighing service: "I certify that I am licensed or authorized under the United States Grain Standards Act (7 U.S.C. 71 *et seq.*) to perform official supervision of weighing service, and that the grain elevator, warehouse, storage, or handling facility which weighed the identified grain has suitable grain-handling equipment, accurate scales, and approved weighers."

(10) *Location of grain.* The location of the grain at the time it was sampled or weighed under the Act, or the location of the carrier or container at the time it was examined under the Act in terms of (i) a railroad yard, pier, elevator, or other specific place; and (ii) the name of the city and the State, if different than the name of the city and State shown in accordance with subparagraph (6) of this paragraph (b).

(11) *Date and method of sampling.* The dates the grain was sampled and the method of sampling the grain. (This subparagraph (11) is not applicable to export, submitted sample, stowage examination, or official Class X weight or official Class Y weight certificates.)

(12) *Seal record.* Upon request of the applicant, (i) for hopper cars, whether bottom seals are intact or missing and (ii) for all other containers, the identification of the seals, if any.

(13) *Identification of container.* For an inspection certificate, or a weight certificate, or a combination certificate that shows the results of an official sample-lot inspection service and an official Class X weighing service, the identification of the container in terms of (i) the State or municipality license number of, or other identification assigned by official personnel to, a truck or trailer, and when necessary to identify an individual truck, trailer, truck/trailer combination, or railroad car, the approximate time of sampling or weighing, or the scale ticket number or the bill of lading number; (ii) the railroad car initials and numbers; (iii) the name or other designation of the ship, barge, or other carrier, and the number or other designation of the hold or other place of stowage; or (iv) the name or other designation of an elevator and bin or compartment.

For an inspection certificate that shows the results of a submitted sample inspection, the applicant's mark, number, or other identification or such identification as the official personnel who issue the submitted sample certificate may deem necessary: *Provided,* That nothing in this subparagraph (13) shall preclude the true showing by an applicant of the identification of the means of conveyance transporting the grain.

(14) *Quantities.* For a lot inspection certificate, the approximate quantity of grain in the lot, stated in terms of truckload, trailerload, carload, bargeload, part truckload, part trailerload, part carload, part bargeload, or by official weight.

(15) *Grade.* The grade and the kind of grain covered by an inspection certificate, except that if a grade is not shown, the word "grade" shall be deleted or otherwise not shown on the certificate. (This subparagraph (15) is not applicable to a certificate for an official sample or an official stowage examination.)

(16) *Results of service.* Information showing the results of the inspection or weighing service, in accordance with the kind, scope, and level of service requested by the applicant.

(17) *Remarks.* The word "Remarks," together with space for statements required by the Service, or other statements requested by an applicant and permitted by paragraph (f) of this §800.161.

(18) *Land carriers and barges (single lots).* For grain in land carriers and barges in single lots, the statements required by §§ 800.85(d), (e), (f), (g), and (h), and 800.98(d) and (e).

(19) *Combined lots.* For grain in land carriers, barges, and ships in combined lots, the statements required by §§ 800.86(i) and 800.99(g).

(20) *Shiplot grain (single lots).* For shiplot grain in single lots, the statements required by §§ 800.87(i) and 800.100(e).

(21) *Superseding statement.* For a certificate for a reinspection service, field appeal inspection service, or Board appeal inspection service, the statements and information required by §§ 800.130(c) and 800.140(c).

(22) *File sample inspection.* For a certificate for a reinspection service, a field appeal inspection service, or a Board appeal inspection service based, in whole or in part, on file samples, the statement required by § 800.83(d).

(23) *Warehouseman's sample-lot inspection.* For a certificate for a warehouseman's sample-lot inspection service, the name of the licensed employee, the number of the contract entered into by the licensed employee, and the statement "This certification does not meet the inspection requirements of Section 5 of the Act."

(24) *Submitted sample inspection.* For a certificate for a submitted sample inspection service, the following statements: (i) in bold print, "The sample identification and inspection results shown on this certificate are assigned only to the quantity of grain in the sample indicated, and not to any identified carrier from which the sample of grain may have been taken. This certificate does not meet the inspection requirements of Section 5 of the Act."; and (ii) in ghost or shadow type diagonally across the face of the certificate, the words "Not officially sampled."

(25) *Stowage examinations.* (i) *Separate Service.* (A) For a certificate for a stowage examination for inspection purposes, the following statements, as appropriate: "Stowage space examined on the above date and found to be substantially clean, dry, free of insect infestation, and suitable to maintain the quality of the grain," or "Stowage space examined on the above date and found not suitable to maintain the quality of the grain because of _____."

(B) For a certificate for a stowage examination for weighing purposes, the following statements, as appropriate: "Stowage space examined on the above date and found suitable to maintain the quality of the grain," or "Stowage space examined on the above date and found not suitable to

maintain the quality of the grain because of ————."

(C) For a certificate for a stowage examination for both inspection and weighing, the following statements, as appropriate: "Stowage space examined on the above date and found to be substantially clean, dry, free of insect infestation, and suitable to maintain the quality and quantity of the grain," or "Stowage space examined on the above date and found not suitable to maintain the quality and quantity of the grain because of ————."

(ii) *Combined service.* For an inspection or weighing certificate other than shiplot grain, a statement in accordance with the instructions which indicate whether or not a stowage examination was performed.

(26) *Sampling service.* For a certificate for an official sampling service, the statement "Official Sample," the date of sampling, the method of sampling, the name of the sampler, and the quantity of grain in the sample in terms of volume or weight.

(27) *Not standardized grain.* For a certificate for a sample or lot that does not conform to the requirements in the Official U.S. Standards for Grain, the statement required by § 800.78(b).

(28) *Divided lot.* For a divided-lot certificate, the statements and information required by § 800.163.

(29) *Duplicate certificate.* For a duplicate certificate, the statements and information required by § 800.164.

(30) *Corrected certificate.* For a corrected certificate, the statements and information required by § 800.165.

(31) *Name.* The name or the signature, or the name and the signature, of the licensed or authorized person who issued the certificate, stated in accordance with the provisions of § 800.160(g).

(32) *Authority and purpose.* A statement as follows: "This certificate is issued under the authority of the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*), and the regulations thereunder (7 U.S.C. 800.1 *et seq.*). It is issued to show the kind, class, grade, quality, condition, or quantity of grain, or the condition of a carrier or container for the storage or transportation of grain, or other facts relating to grain as determined by official personnel. The statements on the certificate are deemed true at the time and place the inspection or the weighing service was performed. The statements shall not be deemed to be true if the grain is transshipped or is otherwise transferred from the identified carrier or container. If this certificate is not canceled by a superseding certificate, it is receivable by all officers and all courts of the United States as prima facie evidence of the truth of the facts stated therein. This certificate does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal Law."

(33) *Statement on negotiability.* For a certificate that shows an official Class X or Class Y weight, the term "Not negotiable."

(34) *Warning.* A warning statement as follows: "Warning: Any person who shall knowingly falsely make, issue, alter, forge, or counterfeit this certificate, or participate in any such actions, or otherwise violate provisions in the U.S. Grain Standards Act, the U.S. Warehouse Act, or related Federal laws, is subject to criminal, civil, and administrative penalties."

(35) *Class Y weight.* For a certificate that shows Class Y weight, the statement "This certificate does not meet the requirements of Section 5 of the Act."

(36) *Reference.* A reference statement as follows: "Please refer to this certificate by its number, including the lettered prefix, if any, and date."

(c) *Statements to be shown on face of certificate.* (1) *General.* Except as shown in subparagraph (2) of this paragraph (c), the statements and information required by paragraph (b) of this § 800.161 and the statements and information permitted by paragraph (g) of this § 800.161 shall be shown on the face of the certificate.

(2) *Exceptions.* The following required or permissive statements and information may be shown on the back of a certificate, other than a certificate for export grain: (i) the abbreviations and the meaning of the abbreviations for official factors or official criteria, as specified in paragraph (e) of this § 800.161; (ii) the statement "Partial inspection—heavily loaded," as specified in § 800.85(f); and (iii) the identification of the carriers or containers in a combined lot, together with the identification of the seals, if any, applied to the carriers or containers, as specified in § 800.86.

(d) *Format and color requirements for certificates.* (1) *General.* Except as provided in subparagraph (2) of this paragraph (d), official certificates for similar kinds and levels of inspection and weighing services shall be uniform in size, shape, color, and format, as specified in instructions issued by the Service. All original certificates (see subparagraph (a)(4) of this § 800.161) and all copies issued to interested persons shall be on white paper, except as follows:

Caption on Certificate	Color of Original Certificate	Color of Copy
Official Certificate—Warehouseman's Sample—Lot Inspection.	yellow	yellow
Official Certificate—Submitted Sample Inspection.	pink	pink
Official Supervision of Weight Certificate.	yellow	yellow

(2) *Special design weight certificates.* Upon request of an applicant and with the approval of the Service, weight certificates that are specially designed may be used by an agency or an authorized field office, as applicable, at an approved weighing facility, subject to the following requirements: (i) the certificates shall show the results of an official Class X weighing service or an official Class Y weighing service on inbound grain or an outbound grain, except export grain; (ii) controls for the printing, storing, and issuance of the certificates must be established and maintained by the agency or the field office that performs weighing services at the facility; (iii) except for the design, the certificates must comply with the provisions of §§ 800.160, 800.161, 800.164, and 800.165; and (iv) the certificates must otherwise conform with instructions issued by the Service.

(3) *Related information.* Special design weight certificates may, at the option of the applicant, include related merchandising information provided the information (i) is shown in a lightly shaded area that is clearly separated by a heavy black line from the remainder of the certificate; (ii) shown in the lightly shaded area is in one location on the certificate; and (iii) shown in the lightly shaded area contains a caption that clearly indicates the information in the shaded area is not a part of the official Class X weighing information or the official Class Y weighing information, substantially as follows: *"Note:* Information shown in shaded area is not part of this official certificate."

(e) *Showing official factor or official criteria identification.* Official factor identifications and official criteria identifications, if printed on inspection certificates, shall be shown in block form. No abbreviations for factors or criteria may be shown on certificates for export grain. When space on certificates, other than certificates for export grain, does not permit showing the full identification for an official factor or an official criteria, an abbreviation approved by the Service may be used if (1) the abbreviation and the meaning of the abbreviation are shown on the back of the certificate and (2) the statement "See reverse side for abbreviations" is shown

on the face of the certificate in the space provided for remarks. (A list of approved abbreviations may be obtained from any field office.)

(f) *Permissive statements and information.* (1) *Requested statements.* Statements requested by an applicant but not required by the regulations or by instructions issued by the Service may be shown on a certificate if the statements (i) have been approved in instructions issued by the Service or (ii) are approved in specific cases by the Administrator. A list of approved statements may be obtained from any agency or field office.

(2) *Other requested information.* Other information requested by an applicant may be shown on a certificate if the information (i) is known to be true by the person issuing the certificate, or (ii) is a type of information approved by the Service as useful in the merchandising of U.S. grain, and (iii) is not inconsistent with the Act, the regulations, or instructions issued by the Service. The information may include, but is not limited to contract, loading order, or purchase authorization numbers, and letter of credit identifications, and in the case of sacked grain, the kind and condition of the sacks, and the markings, if any, on the sacks.

(g) *Letterhead statements and information.* The permissive statements and information prescribed in paragraphs (f) and (g) of this § 800.161 may be shown on designated agency or Service letterhead stationery in lieu of official certificates if (1) space does not permit showing the statements or information on the official certificates, or when letterhead stationery is found by the issuing agency or field office to be more suitable than a certificate; (2) the identification of the corresponding certificates is referenced on the letterhead stationery; and (3) the letterhead statements are issued and distributed in accordance with § 800.160 and instructions issued by the Service. If letterhead statements are issued by delegated agencies for export grain or export grain carriers, the statements shall be issued on Service letterhead stationery.

§ 800.162 Certificates of grade; special requirements.

(a) *General.* Each official certificate that shows an official grade determination shall show (1) the grade in accordance with the Official U.S. Standards for Grain; (2) the test weight of the grain; (3) the moisture content of the grain; (4) the information for any official factor identified in paragraph (b) of this § 800.162 for which an official determination is made during the course of the grade determination; (5) if the grain is graded other than No. 1, the certificate shall show the information for each of the official factors that determined the grade, including the factors commercially objectionable foreign odor, distinctly low quality, heating, musty, or sour; and (6) all official factor information requested by the applicant.

(b) *Cargo certificates.* Each certificate of grade that represents a cargo shipment of a given kind of grain shall show the information for each of the following official factors for the grain, in addition to the information required by paragraph (a) of this § 800.162;

BARLEY: SIX-ROWED MALTING AND SIX-ROWED BLUE MALTING

Black barley; Foreign material; Other grains; Plump barley; skinned and broken kernels; sound barley; Thin barley; Suitable malting type.

MIXED GRAIN

Damaged kernels; foreign materials; Heat-damaged kernels.

OATS

Foreign material; heat-damaged kernels; sound cultivated oats; Wild oats.

BARLEY: TWO-ROWED MALTING

Black barley; foreign material; Plump barley; skinned and broken kernels; sound barley; thin barley; wild oats; Suitable malting type.

BARLEY: SIX-ROWED AND TWO-ROWED (OTHER THAN MALTING) AND BARLEY

Black barley; Broken kernels; Damaged kernels; foreign material; heat-damaged kernels (major); Sound barley; Thin barley.

CORN

Broken corn and foreign material; Damaged kernels (total); heat-damaged kernels.

FLAXSEED

Damaged flaxseed (total); Heat-damaged flaxseed.

WHEAT: DURUM

Contrasting classes; Damaged kernels (total); Defects (total); foreign material; Heat-damaged kernels; Shrunken and broken kernels; NOTE: Wheat of other classes; (total shall not be shown).

RYE

Damaged kernels (total; Foreign material (total); foreign matter other than wheat; heat-damaged kernels.

SORGHUM

Broken kernels, foreign material, and other grains; Damaged kernels (total); heat-damaged kernels.

SOYBEANS

Brown, black, and/or bicolored soybeans in yellow or green soybeans; Damaged kernels (total); foreign material; heat-damaged kernels; splits

TRITICALE

Damaged kernels (total); defects (total); foreign material (total); Heat-damaged kernels; Material other than wheat or rye; Shrunken and broken kernels.

WHEAT: HARD RED SPRING, HARD RED WINTER, SOFT RED WINTER, AND WHITE

Contrasting classes; Damaged kernels (total); Defects (total); foreign material; Heat-damaged kernels; Shrunken and Broken kernels; Wheat of other classes (total).

WHEAT: UNCLASSED

Damaged kernels (total); Defects (total); foreign material; Heat-damaged kernels; Shrunken or broken kernals; Wheat of other classes (total).

WHEAT: MIXED

Damaged kernels (total); Defects (total); foreign material; Heat-damaged kernels; shrunken and broken kernels.

(c) *Additional information.* A certificate of grade may contain any other official factor information that the person issuing the certificate deems necessary to correctly describe the grain.

(d) *application of term "official factor."* For the purpose of this § 800.162, the term "official factor" shall be deemed to include each official factor defined in the Official U.S. Standards for Grain, including but not limited to damaged kernels, moisture, and test weight, and each other official factor identified in the official standards, including but not limited to commercially objectionable foreign odor, distinctly low quality, musty, heating, and sour.

§ 800.163 Divided-lot certificates.

The provisions of this § 800.163 shall be applicable to all kinds and all levels of export cargo grain inspections including original inspection service, reinspection service, field appeal inspection service, Board appeal inspection service, and Class X weighing service.

(a) *Availability of divided certificates.* Subject to the provisions of paragraphs (b) through (g) of this § 800.163, an applicant for official inspection or official class X weighing service on export cargo grain may, upon request, exchange an inspection or weight certificate for an export cargo shipment or an inspection or wieght certificate for a combination export cargo shipment for two or more divided-lot certificates.

(b) *Application for divided-lot certificates.* A request for divided-lot certificates must be filed (1) in writing; (2) by the applicant who filed the request for the official inspection or weighing service on the export cargo shipment; (3) with the agency, the field office, or the Board of Appeals and Review that issued the last outstanding certificates for the export cargo shipment inspection or weighing service; (4) at the time the inspection or weighing serv-

ice was performed or within 5 business days after the date of the last outstanding certificate for the official inspection or the official Class X weighing service; except that, upon a showing of good cause, the agency, the field office, or the Board of Appeals and Review may waive the requirement of this paragraph (b); and (5) before the identity of the grain has been lost.

(c) *General requirements.* (1) *Inspected grain.* To be eligible for divided-lot inspection certificates, the grain in an export cargo shipment must (i) have been offered for inspection as one lot; (ii) have been found to be uniform in quality in accordance with § 800.87(g); (iii) have been certificated as one lot; and (iv) not have been commingled in a stowage area (see § 800.87(i)) with other grain of different kind or quality, or another commodity.

(2) *Weighed grain.* To be eligible for divided-lot weight certificates, the grain in an export cargo shipment must (i) have been offered for weighing as one lot and have been certificated as one lot under § 800.100; (ii) if inspected, be found uniform in quality in accordance with § 800.87(g) and be certificated for inspection purposes under this § 800.163; and (iii) not have been commingled in a stowage area (see § 800.87(i)) with other grain of different kind or quality, or another commodity.

(3) *Quantity restrictions.* No divided-lot inspection or Class X weight certificates shall show in the aggregate a quantity of grain different from the quantity shown on the applicable superseded inspection or weight certificate.

(4) *Surrender of export cargo shipment certificate.* The export cargo shipment certificate that is to be superseded by a divided-lot certificate must (i) be in the custody of the agency or the Service, (ii) be marked "Void—Surrendered for Divided-Lot Certificate", and (iii) show the identification of the divided-lot certificates.

(d) *Certification requirements.* The same information and statements that were shown on the export cargo shipment certificate, including the statements and information authorized by § 800.161(f), shall be shown on each divided-lot certificate except (1) the original and all copies of the divided-lot certificate shall show in the space provided for remarks the following completed statement: "This grain was officially (inspected) (weighed) (inspected and weighed) as an undivided lot of ——— (pounds) (kilograms) (metric tons). No part of the lot was officially (inspected) (weighed) (inspected and weighed) as a separate unit."; (2) the original of the divided-lot certificate shall show the term "Divided Lot—Original" and the copies shall show the term "Divided Lot—Copy"; (3) the divided-lot certificate shall show the same serial number as shown on the superseded certificate, except each divided-lot certificate shall show a serially numbered suffix (e.g., 1764-1, 1764-2, 1964-3, etc.); and (4) the quantity of grain shown on each divided-lot certificate shall be in accordance with the request for the certificate. No divided-lot certificate shall be issued which shows a statement or information that is not authorized or permitted by the regulations.

(e) *Issuance and distribution.* Divided-lot certificates shall be (1) issued as promptly as possible after the request for the certificate is received by the agency, field office, or Board of Appeals and Review, but not later than the close of business on the next following business day and (2) distributed in accordance with the provisions of § 800.160(c). Upon request by an agency or a field office, the requirements of this paragraph (e) may be waived by the Service on a case-by-case basis.

(f) *Limitations.* (1) *General.* No divided-lot certificate shall be issued (i) for the grain in any shipment other than an export cargo shipment, (ii) for an export certificate that has been superseded by another certificate, or (iii) in any manner other than as prescribed in this § 800.163.

(2) *Use of superseded certificate prohibited.* As of the date of issuance of a superseding divided-lot certificate, the superseded certificate shall be considered null and void and shall not thereafter be used to represent any grain.

(3) *No combining or redividing.* After divided-lot certificates have been issued in accordance with the provisions of this § 800.163, there shall be no combining or further dividing of the divided-lot certificates at a later date except as may be approved in specific cases by the Service.

(g) *Other certification requirements.* For general provisions governing the certification of export cargo grain, see §§ 800.87 (f) through (i), 800.100(e), and 800.160(b).

§ 800.164 Duplicate certificates.

The provisions of this § 800.164 shall be applicable to all kinds and all levels of certificates, including certificates for original inspection services, reinspection services, field appeal inspection services, Board appeal inspection services, and weighing services. If an official certificate has been lost or destroyed and has not been superseded, a duplicate certificate may, upon request by the applicant for the service covered by the certificate, be obtained in accordance with the following procedure;

(a) *Application for duplicate certificates.* A request for a duplicate certificate must be filed (1) in writing; (2) by the applicant who filed the request for the inspection or weighing service covered by the certificate; and (3) with the agency, field office, or Board of Appeals and Review that performed the inspection or weighing service.

(b) *Certification requirements.* The same information and statements that were shown on the lost or destroyed certificate, including the statements and information authorized by § 800.161(f), shall be shown on the duplicate certificate except (1) the original of the duplicate certificate shall show the term "Duplicate Original"; (2) the copies of the duplicate certificate shall show the term "Duplicate Copy"; and (3) the original and all copies shall show, in the space provided for remarks, the following completed statement: "This duplicate certificate is issued in lieu of a (lost) (destroyed) certificate."

(c) *Issuance.* A duplicate certificate shall be (1) issued as promptly as possible after a request for a duplicate original has been received and (2) distributed in accordance with the provisions of § 800.160(d).

(d) *Limitations.* No duplicate certificate shall be issued (1) for a certificate that has been superseded by another certificate or (2) in any manner other than as prescribed in this § 800.164.

§ 800.165 Corrected certificates.

(a) *General.* (1) *Verification of information.* The accuracy of the statements and information shown on an official certificate shall be verified by the official personnel whose name or signature is shown on the certificate. If technical or clerical errors are found during verification or at a later date, corrections shall be made in accordance with the provisions of this § 800.165.

(2) *Applicability.* The provisions of this § 800.165 shall apply to all kinds and all levels of certificates, including certificates for original inspection services, official Class X or Class Y weighing services, reinspection services, field appeal inspection services, and Board appeal inspection services.

(b) *Who may correct.* No correction, erasure, addition, or other change shall be made on an official certificate by any individual other than official personnel or authorized agents of such personnel.

(c) *Corrections prior to issuance.* (1) *Export certificates.* No correction, erasure, addition, or other change shall be made or shown on an export inspection or export weight certificate. If errors are found on such a certificate before issuance, the original certificate shall be marked "Void" and no copies shall be issued.

(2) *Other than export certificates.* If errors are found prior to the issuance of a certificate other than an export certificate, the errors may be corrected by issuing another certificate or by making corrections on the incorrect certificate, provided (i) the corrections are neat and legible, (ii) the corrections are initialed by the authorized individual who corrects the certificate, and (iii) the corrections and initials are shown on the original and all copies of the corrected certificate.

(d) *Corrections after issuance.* (1) *General.* Subject to the provisions of paragraph (e) of this § 800.165, and except as provided in paragraph (d) of § 800.126, if errors are found anytime up to a maximum of 1 year after the issuance of an official certificate, the errors shall be corrected by obtaining the incorrect certificate, if possible, and replacing it with a corrected certificate, or if the incorrect certificate cannot be obtained, superseding the incorrect certificate with a corrected certificate.

(2) *Standard statements.* The replacement or superseding corrected certificate shall show the same information and statements that were shown on the incorrect certificate except (i) the correct statement or information shall be shown instead of the incorrect or omitted statement or information; (ii) the corrected certificate shall show the term "Corrected Original," and the copies shall show the term "corrected copy"; (iii) a new serial number shall be shown; and (iv) the original and the copies shall show, in the space provided for remarks, the following completed statement: "This certificate is corrected as to ——— and supersedes Certificate No. ———, dated ———." (The number shown in the statement shall be accompanied by the lettered prefix, if any.)

(3) *Other statements.* If the incorrect certificate is obtained, the certificate shall be marked "Void" in a clear and conspicuous manner. If the incorrected certificate cannot be obtained, the statement "The superseded certificate identified herein has not been surrendered" shall be clearly shown in the space provided for remarks on the corrected certificate. Official personnel shall exercise such other precautions as may be necessary to prevent the fraudulent and unauthorized use of the incorrect certificate.

(e) *Limitations.* No corrected certificate shall be issued (1) for a certificate that has been superseded by another certificate, or (2) on the basis of a subsequent analysis of the grain, or (3) in any manner other than as prescribed in this § 800.165.

(f) *Use of superseded certificate prohibited.* As of the date of issuance of a superseded corrected certificate, the superseded certificate shall be considered null and void and shall not thereafter be used to represent any grain.

§ 800.166 Reproducing certificates.

Holders of official certificates may make photocopies or similarly reproduced copies of the certificates.

§§ 800.167—800.169 [Reserved]

LICENSES AND AUTHORIZATIONS (FOR INDIVIDUALS ONLY)

§ 800.170 When a license or authorization is required.

(a) *General.* (1) *Requirement.* Any individual who performs, or represents that he or she is licensed or authorized to perform, any or all inspection, weighing, or equipment testing functions under the Act must be licensed or authorized by the Service to perform each function.

(2) *30-day waiver.* A prospective applicant for a sampler's, inspection technician's, or weighing technician's license may, under the provision of this § 800.170, for a period of time not to exceed 30 calendar days, help perform official sampling, inspection, or weighing functions for which the applicant desires to be licensed under the direct physical supervision of an individual who is licensed to perform such functions. The supervising individual shall be fully responsible for the sampling, laboratory, and weighing functions performed by the prospective applicant and shall initial any work form prepared by the prospective applicant.

(3) *No fee by Service.* Except as specified in subparagraph (4) of this paragraph (a), no fee or charge will be assessed by the Service for the licensing or authorizing of an individual employed by an agency or contractor.

(4) *Fee by agency.* At the request of the Service, an agency may help examine an applicant for a warehouse sampler's license for competency and may assess a fee in accordance with the provisions of § 800.70. Such fee shall be paid by the applicant or by the grain elevator or warehouse that employs the applicant.

(b) *Excepted activities.* A license or authorization under the Act and the regulations is not required for (1) the opening or closing of a carrier or container of grain, or the transporting or filing of official samples, or similar laboring functions; (2) the typing or filing of official inspection or weighing certificates or other official forms or similar clerical functions; (3) the performance of official equipment testing functions with respect to official inspection equipment; (4) the performance of inspection, weighing, or scale testing functions that are not conducted for the purposes of the Act; or (5) the performance of scale testing functions by a State or municipal agency or by the employees of such agencies.

§ 800.171 Who may be licensed or authorized.

(a) *Prohibitions.* Except as specified in paragraph (b) of this § 800.171, no person may be licensed or authorized who (1) has a conflict of interest specified in Section 11 of the Act, or (2) has a conflict of interest prohibited by § 800.187, or (3) is engaged in any of the activities specified in § 800.187 as involving a conflict of interest.

(b) *Exceptions to prohibitions.* (1) *Conflict by agency.* An employee of an agency that has a conflict of interest that is excepted by the Administrator pursuant to the provisions of Section 11(b)(5) of the Act may be licensed if the employee has no conflict of interest other than the agency's conflict of interest.

(2) *Warehouse samplers.* A qualified employee of a grain elevator or warehouse may be licensed to perform specified sampling functions under the Act in accordance with the provisions of § 800.174(c).

(c) *General qualifications.* (1) *Inspection and weighing.* To obtain a license to perform inspection or weighing functions under the Act (other than appeal functions), an individual must be employed by an agency to perform such functions and otherwise be found competent in accordance with this § 800.171 and § 800.173.

(2) *Specified technical functions.* To obtain a license to perform specified sampling, laboratory testing, weighing, and similar functions under the Act, an individual must (i) be employed by an agency to perform such functions, or (ii) enter into or be employed under a contract with the Service under § 800.200 to perform such functions, and (iii) otherwise be found competent in accordance with §§ 800.171 and 800.173.

(3) *Warehouse sampler.* To obtain a warehouse sampler's license, an applicant must be employed by an elevator or warehouse to perform sampling functions and otherwise be found competent in accordance with this § 800.171 and § 800.173.

(4) *Requirements.* To be deemed competent, an individual must (i) have been found, in accordance with § 800.173, to possess the proper qualifications; and (ii) have available the necessary equipment and facilities for performing the functions for which the individual is to be licensed. Upon showing of good cause, the recruiting requirements may be waived by the Service in specific cases.

(d) *Competency determinations.* (1) *Agency samplers and technicians.* The competency of an applicant for a sampler's, inspection technician's, or weighing technician's license shall be determined by (i) the chief inspector or the chief weighmaster, as applicable, of the agency that employs the

applicant or, in the case of a warehouse sampler, the agency that is assigned the areas in which the elevator that employs the sampler is located, and (ii) the appropriate field office supervisor.

(2) *Inspectors, weighers, contract samplers and technicians.* The competency of an applicant for an inspector's or weigher's license, or a sampler's, inspection technician's, or weighing technician's license under the terms of a contract with the Service shall be determined by the Service.

(3) *Examinations.* The determinations of competency of applicants for licenses shall include an evaluation of the results of examinations or reexaminations, if any, under § 800.173.

(e) *Meaning of "employed."* For the purposes of paragraph (c) of this § 800.171, an individual shall be deemed to be "employed" if (1) the individual is actually employed or (2) the individual's employment is being withheld pending the receipt by the individual of the license required by the Act or the regulations.

§ 800.172 Applications for licenses.

(a) *General.* Applications for licenses, renewals of licenses, or for the return of suspended licenses shall be made to the Service on forms prescribed and furnished by the Service. Each application shall (1) be in English, (2) be legibly typewritten or written in ink, (3) include all information prescribed in the application form, and (4) except for applications for approvals, be signed by the applicant in the applicant's own handwriting.

(b) *Additional information.* Upon request, an applicant shall furnish such additional related information as is deemed necessary by the Service for the consideration of an application.

(c) *Withdrawal.* An application for a license may be withdrawn by an applicant at any time.

(d) *Review of applications.* (1) *General procedure.* Each application shall be reviewed to determine whether the applicant and the application are in compliance with this § 800.172 and Sections 8, 9, and 11 of the Act.

(2) *Application and applicant in compliance.* If it is determined that the application and the applicant are in compliance with the Act and the regulations and the requested action is consistent with the objectives of the Act, the requested license shall be granted.

(3) *Application not in compliance.* If it is determined that an application is not in compliance with this § 800.172 and the noncompliance precludes a satisfactory review by the Service, the applicant shall be provided an opportunity to submit the needed information. If the needed information is not or cannot be submitted by the applicant within a reasonable time, as determined by the Service, the application may be dismissed.

(4) *Applicant not in compliance.* If it is determined that (i) an applicant is not in compliance with the provisions of Sections 8 and 9 of the Act and §§ 800.171 and 800.173 at the time of submitting the application or will not be in compliance during the period that would be covered by a license; or (ii) the requested action is not consistent with the objectives of the Act; or (iii) the applicant has a conflict of interest that is prohibited by Section 11 of the Act or § 800.187, the applicant shall be provided an opportunity to achieve compliance or to terminate or otherwise resolve a conflict of interest. If the applicant cannot achieve compliance within a reasonable period of time, as determined by the Service, or if the conflict of interest is not or cannot be resolved by the applicant, the application shall be dismissed.

(e) *Procedure for dismissal.* If dismissal involves an application for a renewal of a license or for the return of a suspended license, the dismissal shall be performed in accordance with the provisions of § 800.179. All other dismissals shall be performed by promptly notifying the applicant and the applicant's employer, if any, of the reasons for the dismissal.

§ 800.173 Examinations and reexaminations.

(a) *General.* Applicants for a license and individuals who are licensed or authorized to perform official inspection or official Class X or Class Y weighing shall, whenever deemed warranted by the Service, submit to examinations or reexaminations to determine their competency to perform any or all official inspection, or weighing, or equipment testing functions for which they desire to be, or are, licensed or authorized. In the case of an employee of any agency, the determination by the Service shall be made in consultation with the appropriate chief inspector or chief weighmaster, as applicable. In the case of an employee assigned to a field office, the determination by the Service shall be made in consultation with the appropriate field office supervisor.

(b) *Time and place of examinations and reexaminations.* Examinations or reexaminations under this § 800.173 shall be conducted by official personnel designated by the Service. The examinations and reexaminations shall be held at a reasonable time and place and in a reasonable manner, in accordance with instructions issued by the Service.

(c) *Scope of examinations and reexaminations.* Examinations or reexaminations may include but are not limited to color-vision tests, onsite or other performance tests, or oral written tests and may be based, in whole or in part, on the applicable provisions of the Act, the regulations, the Official U.S. Standards for Grain, the procedures for the inspection and weighing of grain under the Act, and instructions issued by the Service.

(d) *Competency standards.* (1) *Inspection.* In determining competency, an individual may be deemed not competent to perform all or specified official inspection functions if the individual (i) has a serious color-vision deficiency; (ii) cannot meet the physical requirements of some or all of the official functions; (iii) cannot readily distinguish between the different kinds and classes of grain, or the different conditions in grain, including heating, musty, sour, insect infestation, smut, or other conditions which could have a direct impact on the merchantability or storability of grain; (iv) does not have or cannot demonstrate a technical ability to operate grain sampling, testing, and grading equipment; (v) does not have working knowledge of the applicable provisions of the Act, the regulations, the Official U.S. Standards for Grain, and the instructions; (vi) cannot determine work-related mathematical computations; or (vii) cannot prepare legible records in the English language.

(2) *Weighing.* An individual may be deemed not competent to perform all or specified official Class X or Class Y weighing functions if the individual (i) does not meet the requirements of clauses (ii), (v), (vi), and (vii) of subparagraph (1) of this paragraph (d) or (ii) does not have or cannot demonstrate a technical ability to operate grain weighing equipment.

(3) *Equipment testing.* An individual may be deemed not competent to perform all or specified official equipment testing functions if the individual (i) does not meet the requirements of clauses (ii), (v), (vi), and (vii) of subparagraph (1) of this paragraph (d) or (ii) does not have or cannot demonstrate a technical ability to operate and test weighing equipment.

§ 800.174 Issuance and possession of licenses and authorizations.

(a) *Form of license and authorization.* Licenses shall be on forms prescribed for the purpose and furnished by the Service. Authorizations shall be in the form of approved position descriptions issued by the Service

(b) *Kinds of licenses and authorizations.* Licenses and authorizations will be issued on the basis of the functions performed by an individual, as follows:

License (LI) or Authorization (AU) and primary function

Sampler (LI) (AU)—Sampling grain

Inspection technician (LI) (AU)—Testing grain (non-interpretive functions only)
Inspector (LI) (AU)—Grading grain
Weighing technician (LI) (AU)—Grain handling
Weigher (LI) (AU)—Weighing grain
Scale tester (AU)—Testing weighing equipment.

An eligible individual may be licensed or authorized to perform one or more functions, but only one license or authorization will be issued per individual.

(c) *Scope of licenses and authorizations.* Subject to the provisions of § 800.171 and paragraph (b) of this § 800.174, eligible individuals may be licensed or authorized, as appropriate, to perform one or more functions as specified in subparagraphs (1) through (6) of this paragraph (c).

(1) *Official samplers.* Samplers employed by the Service, an agency, or employed under the terms of a contract with the Service may be licensed or authorized, as appropriate, to perform or supervise the performance of stowage examinations, grain sampling, and related technical functions and to issue official certificates for the functions performed by them.

(2) *Licensed warehouse samplers.* Elevator or warehouse employees who enter into a contract with the Service may be licensed to sample grain and perform stowage examinations pursuant to the contract and to issue reports for the functions performed by them. However, no grain elevator or warehouse employee shall be licensed to (i) sample export grain for inspection under the Act, (ii) test grain, (iii) grade grain, or (iv) certify the results of any official inspection function under the Act.

(3) *Official inspection technicians.* Inspection technicians employed by the Service, an agency, or employed under the terms of a contract with the Service may be licensed or authorized, as appropriate, to perform or supervise the performance of stowage examinations, grain sampling, or all or specified non-interpretive laboratory-testing functions and to issue official certificates for the functions performed by them.

(4) *Official inspectors.* Inspectors employed by the Service or an agency may be licensed or authorized, as appropriate, to perform and supervise the performance of stowage examinations, sampling, laboratory testing, grading, and related functions and to issue official certificates for the functions performed by them. No person other than a licensed or authorized inspector may issue under the Act an official certificate which shows an official grade.

(5) *Official weighing technicians.* Weighing technicians who are employed by the Service, an agency, or employed unde the terms of a contract with the Service to observe the loading, unloading, and handling of grain that has been or is to be weighed under the Act may be licensed or authorized, as appropriate, to perform and supervise the performance of grain handling and stowage examination functions and to issue official certificates for the functions performed by them.

(6) *Official weighers.* Weighers employed by the Service, an agency, or employed under the terms of a contract with the Service may be licensed or authorized, as appropriate, to perform and supervise the performance of grain handling, stowage examination, Class X and Class Y weighing and related functions and to issue official certificates for the functions performed by them. No person other than a licensed or authorized weigher may issue under the Act an official Class X or Class Y weight certificate.

(d) *Issuing office.* All licenses and authorizations shall be issued by the Service.

(e) *Condition for issuance.* (1) *Compliance with Act.* Each license is issued on the condition that the licensee will, during the term of the license, comply with the applicable provisions of the Act, the regulations, and the instructions issued by the Service.

(2) *Possession of license.* Each license shall be the property of the Service, but each licensee shall have the right to possess his/her license subject to the provisions of subparagraph (g) of this § 800.174 and §§ 800.173, 800.186, and 800.187.

(f) *Duplicate license.* Upon satisfactory proof of the loss or destruction of a license, a duplicate will be issued by the Service.

(g) *Retention of licenses.* Each license shall be retained by the holder of the license in such manner that the license can be promptly examined upon request by official personnel.

§ 800.175 Termination of licenses.

(a) *Term of license.* Each license shall terminate in accordance with the termination date shown on the license and as specified in paragraph (b) of this § 800.175. The termination date for a license shall be no less than 3 years or more than 4 years after the issuance date for the initial license; thereafter, every 3 years: *Provided,* That upon request of a licensee and for good cause shown, the termination date may be delayed by the Administrator for a period not to exceed 60 days.

(b) *Termination schedule.* (1) *Licenses.* Subject to the provisions of paragraph (a) of this § 800.175, licenses shall terminate on the last day of the month shown in the following schedule:

Surnames beginning with	Termination date (last day of month shown)
A	January
B	February
C, D	March
E, F, G	April
H, I, J	May
K, L	June
M	July
N, O, P, Q	August
S	September
R, T, U, V	October
W	November
X, Y, Z	December

(c) *Termination notices.* Notices of termination shall be issued to licensees and to their employers by the Service at least 60 days in advance of the termination date. The notices shall (1) provide detailed instructions for requesting renewal of licenses (2) state whether an examination or reexamination will be required; and (3) if an examination or reexamination will be required show the nature and scope of the examination or reexamination. Failure to receive a notice from the Service shall not exempt licensees from the responsibility of having their license renewed on or before the expiration date prescribed in paragraph (b) of this § 800.175.

(d) *Renewal of licenses.* Licenses that are renewed shall show the licensee's permanent license number, the date of renewal, and the word "Renewed."

(e) *Termination of suspended licenses.* Any suspension of a license, including voluntary suspension or automatic suspension by change in employment, shall not affect the termination date of the license. If a licensee makes timely and sufficient application for the renewal of his/her license prior to the termination date, it will not terminate during the period of suspension.

(f) *Surrender of license.* Each license that is terminated, suspended, or canceled under the provisions of §§ 800.175 through 800.178 or not renewed, suspended, or revoked for cause under the provisions of § 800.179 shall be promptly surrendered to the appropriate field office by the employing agency or by the licensee.

(g) *Marking terminated, canceled, or revoked licenses.* Each terminated, canceled, or revoked license surrendered to the Service shall, upon receipt, be marked "Canceled" and retained in the licensee's file.

§ 800.176 Voluntary suspension or cancellation of licenses.

(a) *General.* Licenses may, upon the request of the licensee, be suspended or canceled by the Service in accordance with paragraphs (b) and (c) of this § 800.176.

(b) *When a license may be voluntarily canceled or suspended.* Upon re-

quest by a licensee, a license may be voluntarily canceled, or may, upon a showing of good cause, be voluntarily suspended for a period of time not to exceed 1 year. Requests for voluntary cancellation or suspension, or applications for the return of a voluntarily suspended license, shall be submitted in accordance with § 800.172.

(c) *Cancellation after suspension.* If a license has been voluntarily suspended for a period of 1 year and no request has been received for the return of the license, or a request for the return of the license has been dismissed in accordance with the provisions of § 800.172, the license shall be summarily canceled by the Service at the expiration of 1 year, in accordance with the provisions of § 800.178.

(d) *Return of voluntarily suspended licenses.* Licenses that are surrendered for voluntary suspension shall be returned by the Service to the licensee, only upon request, in accordance with the provisions of § 800.172.

§ 800.177 Automatic suspension of license by change in employment.

A license issued to an individual who is employed by an agency shall be automatically suspended when the individual ceases to be employed by the agency. If the individual is employed by the agency or by a comparable agency within 1 year of the suspension date and the license has not expired or been canceled in the interim, upon request of the licensee, the license will be reinstated subject to the provisions of § 800.173.

§ 800.178 Summary revocation of licenses.

Licenses may be summarily revoked by the Service upon a finding that the licensee has (a) been convicted of any offense prohibited by Section 13 of the Act, or (b) been convicted of any offense proscribed by Title 18 of the United States Code with respect to the performance of official functions under the Act, or (c) been imprisoned for a period in excess of 1 year.

§ 800.179 Refusal of renewal, or suspension, or revocation of licenses for cause.

NOTE: For provisions on refusal of renewal, or suspension, or revocation of licenses for cause, see Section 9 of the Act (7 U.S.C. 85).

(a) *Procedure for temporary action.* (1) *Provision for temporary action.* Whenever the Service has reason to believe there is cause for temporary action and deems such action to be in the best interest of the inspection and weighing system, a license may be temporarily suspended, or the renewal of a license may be temporarily refused, or the return of a suspended license may be temporarily refused without first affording the licensee, hereafter referred to in this § 800.179 as the "respondent," an opportunity for a hearing.

(2) *Notice and effective date of temporary action.* Notice of a temporary action shall be given to the respondent and to the respondent's employer, in accordance with paragraph (c) of this § 800.179. The temporary action shall be effective upon receipt of the notice by the respondent.

(3) *Termination of temporary action.* Within 30 business days following the receipt of a notice of temporary action, the Service shall (i) afford the respondent an opportunity for a hearing under paragraph (b) of this § 800.179 and shall continue the temporary action if it is found by the Service that (A) alternative employment arrangements satisfactory to the Service will not or cannot be effected for the respondent by the employer of the respondent pending a final determination under paragraph (b) of this § 800.179 or (B) the public health, interest, or safety require a continuation of the temporary action; or (ii) afford the respondent the opportunity for a hearing under paragraph (b) of this § 800.179, and shall terminate the temporary action if it is found that (A) alternative employment arrangements satisfactory to the Service can be and are effected for the respondent by the employer of the respondent and (B) the public health, interest, and safety do not require a continuation of the temporary action; or (iii) terminate the temporary action with a suitable written notice or warning under Section 14(b) of the Act; or (iv) terminate the temporary action without prejudice. The Service shall promptly notify the respondent and the employer of the respondent of the action under this subparagraph (a)(3).

(b) *Procedure for other than temporary action.* Except as provided in paragraph (a) of this § 800.179, in refusing to renew a license, in suspending or revoking a license, and in refusing to return a suspended license, the respondent shall be afforded an opportunity for (1) an informal conference in accordance with the Rules of Practice Governing Informal Proceedings in Part 808 of this chapter, or (2) a hearing, at the request of the licensee, in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 554, 556, and 557) and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR Part 1, Subpart H).

(c) *Notice of action.* When a license is suspended, revoked, or not renewed or when a license is not returned under paragraph (b) if this § 800.179, the Service shall promptly notify the respondent and the employer of the respondent of the reasons for the action in accordance with the provisions of the Rules of Practice Governing Informal Proceedings in Part 808 of this chapter.

§ 800.180 Summary cancellation of licenses.

Licenses may be summarily canceled by the Service when (a) the license has been under (1) voluntary suspension for 1 year or (2) automatic suspension for 1 year; or (b) the licensee (1) has died or (2) fails to surrender the license in accordance with the provisions of § 800.175(f); or (c) no official functions have been performed under the license for a period of 1 year. Before a license is canceled pursuant to paragraph (c) of this § 800.180, written notice of proposed cancellation shall be given to the licensee and the employing agency at least 30 business days in advance of the proposed date of cancellation. Thereafter, if official functions authorized by the license are performed by the licensee and notice thereof is given to the Service prior to the proposed date of cancellation, the cancellation shall not be made effective. If official functions authorized by the license are not performed by the licensee prior to the proposed date, the license shall be summarily canceled by the Service. Notices of licenses that are summarily canceled shall be promptly forwarded by the Service to the licensee.

§§ 800.181—800.184 [Reserved]

DUTIES AND CONDUCT OF LICENSED AND AUTHORIZED PERSONNEL

§ 800.185 Duties of official personnel and warehouse samplers.

(a) *General.* Official personnel and warehouse samplers shall be responsible for performing the duties specified in the Act, the regulations, the applicable instructions, and paragraphs (b) through (i) of this § 800.185.

(b) *Inspection and weighing functions.* Official personnel shall perform requested official inspection and official Class X and Class Y weighing functions (1) without discrimination, except as authorized in § 800.81(b); (2) as soon as practicable; (3) upon reasonable terms; and (4) in accordance with methods and procedures prescribed in the instructions issued by the Service.

(c) *Sealing carriers or containers.* Upon request of the Service, official personnel shall (1) when feasible, affix security seals to doors, hatch covers, and similar openings on carriers or containers that contain grain that has been inspected or weighed under the Act and (2) show seal records on certificates and other official forms in accordance with subparagraph (b)(12) or § 800.161.

(d) *Scope of operations.* Except as provided in this paragraph (d), official

personnel and warehouse samplers shall (1) operate within the scope of the functions specified on their license or authorization and (2) operate only within the area of responsibility assigned to the applicable agency, field office, or contractor, if any. Official personnel and warehouse samplers may perform official inspection or weighing functions in a different area of responsibility only with the consent of the Service.

(e) *Working materials.* Official personnel and warehouse samplers shall have available for thier use and shall familiarize themselves with the applicable provisions of the Act, the regulations, the Official U.S. Standards for Grain, the official methods and procedures for the inspection of grain, the weighing of grain, the testing of equipment, and the instructions issued by the Service.

(f) *Observation of functions.* Official personnel and warehouse samplers shall permit any person (or the person's agent) who has a financial interest in grain that is being inspected or weighed under the Act, or in equipment that is being tested under the Act, to observe the performance of any or all official inspection, official Class X or Class Y weighing, or official equipment testing functions performed by them. Appropriate areas in the elevator may be specified by the Service in conjunction with the elevator management for observing each function. The areas shall be safe, shall afford a clear and unobstructed view of the performance of the functions, but shall not permit a close over-the-shoulder type of observation by the interested person or the person's agent.

(g) *Reporting changes.* Licensees and warehouse samplers shall promptly inform the appropriate field office of any change in the scope or sphere of their duties, or of their employment, or any suspension of their inspection or weighing functions that would impair the performance of official inspection or weighing services at the specified service point or other location to which the licensees or samplers are assigned.

(h) *Reporting violations.* Official personnel shall promptly report to their immediate supervisor and warehouse samplers shall promptly report to the appropriate field office (1) information which shows or tends to show a violation of any provision of the Act, the regulations, or the instructions issued by the Service and (2) information of any instructions which have been issued to them by any official personnel or other person which are contrary to, or inconsistent with, the Act, the regulations, or the instructions issued by the Service.

(i) *Related duties.* Official personnel and warehouse samplers shall, to the extent consistent with their assigned duties, assist in training other employees who desire to become licensed. Upon request of the Service, selected licensees may assist in examining applicants for licenses for competency.

(j) *Instructions by Service.* Official personnel and warehouse samplers shall execute diligently all instructions issued to them by the Service, either in writing or orally, and, upon request, shall inform the Service in full detail regarding inspection, weighing, or testing equipment used by them and inspection, weighing, or equipment testing services performed by them.

§ 800.186 Standards of conduct.

(a) *General.* Official personnel and warehouse samplers must maintain high standards of honesty, integrity, and impartiality to assure proper performance of their duties and responsibilities and to maintain the confidence of the grain industry and the public in the services performed by them. The public's confidence in the services depends not only on the manner in which the personnel perform their duties and responsibilities, but also on the way the personnel conduct themselves in public.

(b) *Licensees and other personnel.* (1) *Licensees.* Licensees other than warehouse samplers shall be subject to the conflict of interest provisions of Section 11 of the Act and the standards of conduct prescribed by paragraphs (d) through (f) of this § 800.186 and by § 800.187.

(2) *Warehouse samplers.* Except as provided in subparagraphs (d)(7) and (d)(8) of this § 800.186 and subparagraphs (b)(1) and (b)(4) of § 800.187, warehouse samplers shall be subject to the standards of conduct prescribed by paragraphs (d) and (e) of this § 800.186 and § 800.187.

(c) *Authorized employees.* Authorized employees of the Department of Agriculture are subject to the conflict of interest provisions of Section 11 of the Act and the standards of conduct prescribed by (1) paragraphs (d) through (f) of this § 800.186; (2) § 800.187, and (3) Title 7, Part 0, Subpart A, of the Code of Federal Regulations covering Federal employee responsibilities and conduct.

(d) *Prohibited conduct—general.* Except as provided in subparagraph (8) of this paragraph (d), official personnel and warehouse samplers are specifically prohibited from:

(1) Performing official inspection, weighing, or weighing equipment-testing functions unless they are licensed or authorized by the Service to perform such functions.

(2) Engaging in criminal, dishonest, or notoriously disgraceful conduct, or other conduct prejudicial to the Department of Agriculture or the Service.

(3) Reporting for duty in an intoxicated or drugged condition, or consuming intoxicating beverages or incapacitating drugs while on duty.

(4) Smoking in prohibited areas in elevators or other grain-handling facilities, or otherwise performing official functions in an unsafe manner which could endanger other persons working in or about the premises.

(5) Making unwarranted criticisms or accusations against other official personnel, warehouse samplers, or employees of the Department of Agriculture.

(6) Refusing to give testimony or respond to questions in connection with official inquiries or investigation.

(7) Soliciting contributions from other official personnel or warehouse samplers for, or making a donation for a gift to, an employee of the Service. Nothing in this subparagraph (7) shall preclude the occasional voluntary giving or acceptance of gifts of nominal value on special occasions such as retirement.

(8) Taking any action, whether or not specifically prohibited by this paragraph (d), which might result in, or create the appearance of (i) losing the individual's complete independence or impartiality or (ii) adversely affecting the confidence of the public in the integrity of the inspection, weighing, or equipment-testing services performed by the individuals. Warehouse samplers shall not be deemed to be in violation of the restrictions in this subparagraph (d)(8) or § 800.187 solely because of their employment.

(9) Violating any provision of Section 13 of the Act or, subject to the exceptions specified in § 800.186(d)(8), any provision of §§ 800.186, 800.187, and 800.188.

(e) *Outside (nonofficial) work or activities.* Official personnel shall not engage in any outside (nonofficial) work or activity if:

(1) The efficiency of the personnel may be impaired by the performance of the outside work; for example, where the outside work is of such onerous or fatiguing nature as to injure the health or prevent the personnel from doing their best work during their official hours;

(2) The work or activity consists, in whole or in part, of the performance of nonofficial sampling, stowage examination, laboratory testing, equipment testing, inspection, or weighing functions similar to the official functions for which an agency may be designated as defined in § 800.1, or if the work or activity may otherwise be construed by the public to be the offical acts of official personnel;

(3) The business interests to be established or the property interests to be acquired may result in a conflict of interest under Section 11 of the Act or a conflict of duties between the private duties and the official duties of the official inspection personnel; or

(4) The work or activity may otherwise tend to bring criticism on or cause embarrassment to the Department or the Service.

(f) *Activities with farm organizations.* (1) *Restrictions.* It is the policy of the Department that it shall deal fairly with all farm organizations and deal with each upon the same basis. In accordance with this policy and subject to the provisions of subparagraph (2) of this paragraph (f), it is not permissible for official personnel to:

(i) Participate in activities concerned with establishing any general or specialized farm organization, such as the national, regional, State, and local organizations of the American Farm Bureau Federation, the Farmers' Union, The National Association of Soil Conservation Districts, the National Council of Farmer Cooperatives, the National Farmers Organization, the National Grange, the National Rural Electric Cooperative Association, and breed and commodity organizations;

(ii) Act as organizer for any general or specialized farm organization or hold any office therein;

(iii) Act as financial or business agent for any general or specialized farm organization;

(iv) Participate in any way in any membership campaign or other activity designed to recruit members for any general or specialized farm organization;

(v) Accept the use of free office space or contributions for salary or traveling expense from any general or specialized farm organization;

(vi) Advocate that any particular general or specialized farm organization is better adapted for representing the interests of farmers than any other organization or individual; or

(vii) Advocate or recommend that the responsibilities of any agency of the Department of Agriculture or the responsibilities of any other Federal, State, or local agency should be carried out through any particular general or specialized farm organization.

(2) *Exceptions.* The restrictions set forth in this paragraph (f) do not:

(i) Preclude membership in general or specialized farm organizations, such as cow-testing organizations; or

(ii) Prohibit official personnel from participating in the organization or operation of local groups that conduct Federal, State, or local government-authorized programs; for example, local Rural Electrification Association, and similar groups determined by the Service to be involved in conducting Federal, State, or local government-authorized programs.

800.187 Conflicts of interest.

(a) *Definitions.* For the purpose of this § 800.187, unless the context requires otherwise, the following terms shall be construed respectively to have the meanings given for them below:

(1) *Gratuity.* Any favor, entertainment, gift, tip, loan, payment for unauthorized or fictitious work, unusual discount, or anything of monetary value. The term shall not be deemed to include (i) the occasional exchange of a cup of coffee or similar social courtesies of similar nominal value in a business or work relationship if the exchange is wholly free of any embarrassing or improper implications; (ii) the acceptance of unsolicited advertising material, such as pencils, pens, and note pads of nominal value if the material is wholly free of any embarrassing or improper implications; and (iii) the exchange of the usual courtesies in an obvious family or personal relationship (including those between official personnel and their parents, spouses, children, or close personal friends) when the circumstances make it clear that the exchange is the result of the family or personal relationship, rather than a business or work relationship.

(2) *During the term of the license, authorization, or employment.* The period an individual is licensed, authorized, or employed, including any period of suspension, whether the suspension is voluntary or for cause.

(b) *Conflicts.* In addition to the conflicts of interest prohibited by Section 11 of the Act, the activities specified in subparagraphs (b)(1) through (b)(6) of this § 800.187 shall also be deemed to involve a conflict of interest if engaged in by official personnel or other persons subject to Section 11 of the Act. No official personnel shall:

(1) Knowingly perform, or participate in performing, an inspection or weighing service on grain in which they have a direct or indirect financial interest.

(2) Be engaged in buying, selling, transporting, cleaning, elevating, storing, binning, mixing, blending, drying, treating, fumigating, or other preparation of grain (other than as a grower of grain, or the disposition of inspection samples); or in the business of cleaning, treating, or fitting of carriers or containers for transporting or storing grain; the merchandising for nonfarm use of equipment for cleaning, drying, treating, fumigating, or otherwise processing, handling, or storing grain; or the merchandising of grain inspection equipment (other than buying or selling by official personnel of such equipment for use in the performance of their official functions).

(3) Seek or hold any appointive or elective office or position in a national, regional, State, or local grain industry group, organization, or association. This provision is not applicable to national, regional, or local organizations of inspectors or weighers including, but not limited to the National Association of Chief Grain Inspectors and the Terminal Grain Weighmasters National Association.

(4) Accept any fee or charge or other thing of monetary value, in addition to the published fee or charge, for the performance of official inspection or weighing functions under circumstances in which such acceptance could result; or create the appearance of resulting, in (i) the use of their office or position for undue private gain, (ii) giving undue preferential treatment to any group or any person, or (iii) the loss of complete independence or impartiality in the performance of official inspection or weighing functions.

(5) Participate, directly or otherwise, in any transaction involving the purchase or sale of corporate stocks or bonds, grain or grain-related commodities, or other property for speculative or income purposes if such action might interfere or tend to interfere with the proper and impartial performance of official inspection or weighing functions, or bring discredit upon the Department or the Service. Subject to the provisions of this § 800.187, official personnel are not prohibited from (i) producing grain as a grower and selling the grain (but see subparagraph (b)(1) of this § 800.187); (ii) making bona fide investments in governmental obligations, banking institutions, savings and loan associations, and other tangibles and intangibles that are clearly not involved in the production, transportation, storage, marketing, or processing of grain; or (iii) borrowing money from banks or other financial institutions on customary terms to finance a home mortgage loan or similar proper and usual personal activities.

(6) Coerce or give the appearance of coercing any person to provide special or undue benefits to official personnel, approved weighers, or warehouse samplers.

(c) *Reports of interests.* Official personnel and warehouse samplers shall report such information regarding their employment or other business or financial interests as may be required by the Service.

(d) *Avoiding conflicts of interest.* Official personnel and warehouse samplers shall at all times avoid acquiring any financial interest or engaging in any activity that would result in a violation of this § 800.187, or § 800.186, or

Section 11 of the Act, and shall not permit their spouses, minor children, or blood relatives who reside in their immediate households to acquire any such interest or engage in any such activity. For the purpose of this § 800.187, the interest of a spouse, minor child, or blood relative who is a resident of the immediate household of official personnel shall be considered to be an interest of the official personnel.

(e) *Disposing of a conflict of interest.* (1) *Remedial action.* Upon being informed that a conflict of interest exists and that remedial action is required, an applicant for a license or an authorization and official personnel and warehouse samplers shall take immediate action to end the conflict of interest and inform the Service of the action taken.

(2) *Hardship cases.* Applicants, official personnel, or warehouse samplers who believe that remedial action will cause undue personal hardship may request an exception by forwarding to the Service a written statement setting forth the facts, circumstances, and reasons for requesting an exception.

(3) *Failure to terminate.* If a final determination is made by the Service that a conflict of interest does exist and should not be excepted, failure to terminate the conflict of interest shall subject (i) an applicant for a license to a dismissal of the application and (ii) an employee of the Service to disciplinary action.

§ 800.188 Other prohibited actions by official personnel.

(a) *General.* In addition to the prohibitions or restrictions prescribed in the Act of §§ 800.186 and 800.187, official personnel shall be subject to the prohibitions in paragraphs (b) through (f) of this § 800.188.

(b) *Instructions by supervisors.* No chief inspector, chief weighmaster field office supervisor, or other supervisory official personnel shall issue to official personnel, approved weighers, or warehouse samplers under their supervision any instructions inconsistent with the Act, the regulations, or the written instructions issued by the Service.

(c) *Crop year, variety, and origin statements.* No official personnel shall certify or otherwise state in writing (1) the year of production of grain; e.g., by use of terms such as "new crop" or "old crop;" (2) the place or geographical area where the grain was grown; or (3) the variety of grain.

(d) *Issuing superseded certificates.* Except with the approval of the appropriate field office, no offical personnel shall issue, or permit to be issued over their signature or name, an official certificate which has been superseded by another certificate.

(e) *Application of tolerances.* In issuing certificates under the Act, no official personnel shall apply any administrative, statistical, or other tolerance to their official determinations other than the tolerances prescribed in §§ 800.129, 800.130, 800.139, and 800.140 or the performance requirements for equipment in Parts 802 and 803 of this Chapter.

(f) *Right of inspection.* No official personnel shall prevent or attempt to prevent any interested person from exercising the right to request any inspection or weighing service. The dismissal of a request for an inspection or weighing service, or a discussion with an interested person of a dismissal or conditional withholding of an inspection or weighing service, shall not be deemed to be in violation of this § 800.188.

§ 800.189 Corrective actions for violations.

(a) *Criminal prosecution.* Official personnel, other Department personnel, and warehouse samplers who commit an offense prohibited by Section 13 of the Act are subject to criminal prosecution in accordance with Section 14 of the Act.

(b) *Administrative action.* (1) *Other than Service employees.* In addition to possible criminal prosecution, licensees and warehouse samplers are subject to administrative action in accordance with this paragraph (b) and Section 9 of the Act.

(2) *Service employees.* In addition to possible criminal prosecution, employees of the Service are subject to administrative action, including but not limited to changes in assigned duties and disciplinary action in accordance with the law.

§§ 800.190—800.194 [Reserved]

DELEGATIONS, DESIGNATIONS, APPROVALS, AND CONTRACTUAL ARRANGEMENTS

§ 800.195 Restrictions on performance of official functions.

(a) *Export port locations.* (1) *General restriction.* Only the Service or certain State agencies delegated authority by the Service under § 800.200 may perform official original inspection, official reinspection, official Class X or Class Y weighing, or official review of weighing functions at export port locations. (Information on export port locations and on the inspection and weighing arrangements at a given export port location may be obtained in accordance with § 800.10.)

(2) *Inspection by Service; weighing by Service.* If official original inspection functions are performed by the Service at an export port location, only the Service may perform official Class X or Class Y weighing functions at that location.

(3) *Inspection by State; weighing by State or by Service.* If official original inspection functions are performed by a State at an export port location, only the State, or the Service, may perform official Class X or Class Y weighing functions at that location.

(b) *Other than export port locations.* If official original inspection functions are performed at a given location by a designated inspection agency, official Class X or Class Y weighing functions at that location may be performed only by the designated inspection agency, if the agency is found qualified by the Service and is available to perform official Class X or Class Y weighing functions. If the designated inspection agency is found not qualified or is not available, the official Class X or Class Y weighing functions may be performed by an inspection or weighing agency that is found qualified by the Service and is available, or the functions may be performed by the Service.

(c) *One inspection and one weighing agency per location.* Only one agency, or the Service, may be operative at one time at a given location or area for the performance of official original inspection functions. Subject to the provisions of paragraphs (b) and (d) of this § 800.195, only one agency, or the Service, or one agency and the Service may be operative at one time at a given location or area for the performance of official Class X or Class Y weighing functions.

(d) *Interim authority.* (1) *By agency.* An agency may perform official original inspection or official Class X or Class Y weighing functions in specified areas on an interim basis.

(2) *By Service.* Official original inspection or Class X or Class Y weighing functions may be performed by the Service at locations other than export port locations on an interim basis in accordance with Sections 7(h) and 7A(c) of the Act.

§ 800.196 Delegation, designation, approval, or contractual arrangement; conflict of interest provisions.

(a) *Delegations.* Under Sections 7 and 7A of the Act, only the States of Alabama, California, Florida, Minnesota, Mississippi, South Carolina, Virginia, Washington, and Wisconsin have been delegated authority by the Administrator to perform official inspection or official Class X or Class Y weighing functions at export port locations.

(b) *Designations.* Any State or local governmental agency or any person may, as provided in Sections 7 and 7A of the Act, file an application with the Service for (1) a designation, (2) a renewal of a designation, (3) the suspension or cancellation of a designation, (4) the return of a suspended designa-

tion, or (5) the amendment of a designation to operate as an official agency and to perform official inspection and reinspection functions and official Class X or Class Y weighing functions at locations other than export port locations (see § 800.16(b)) in the United States.

(c) *Approvals.* (1) *Scale testing organization.* Any scale testing organization may file an application with the Service for an approval to operate as a scale testing organization under the Act.

(2) *Weighing facility.* Any State or local governmental agency or person who operates an elevator, warehouse, or other grain storage, handling, or weighing facility in the United States, and any Province or local governmental agency or person who operates an elevator, warehouse, or other grain storage, handling, or weighing facility in Canada that stores, handles, or weighs United States export grain transshipped through Canadian ports, may apply to the Service for approval to operate as a weighing facility under the Act.

(d) *Contractual arrangements.* (1) *United States and foreign ports.* Subject to the provisions of subparagraph (3) of this paragraph (d), any State or local governmental agency or person may, as provided in Sections 8 and 11 of the Act, file an application with the service for a contract to perform (i) specified official sampling, laboratory testing, Class X or Class Y weighing, and similar technical functions involved in the performance of official inspection and reinspection functions and official Class X and Class Y weighing functions in the United States; (ii) monitoring activities in foreign ports, including Canadian ports, with respect to export grain that has been inspected and officially weighed under the Act.

(2) *Canada.* The administrator may enter into a cooperative arrangement with the Canada Department of Agriculture, or other Canadian governmental agency for the performance by employees of the Canada Department of Agriculture, or other Canadian governmental agency of specified official sampling, laboratory testing, Class X or class Y weighing, and similar technical functions involved in the performance of official inspection and reinspection functions and official Class X and Class Y weighing functions, other than appeal functions, on United States grain being transhipped through Canadian ports.

(3) *Restrictions on eligibility.* (i) *General.* Except as provided in clause (iii) of this subparagraph (3), no state or local governmental agency, or person who has a conflict of interest specified in Section 11 of the Act or § 800.187, shall be deemed eligible to enter into a contract with the service for the performance of services identified in this paragraph (d).

(ii) *Appeal services.* Agencies or employees of agencies are not eligible to enter into a contract with the Service to obtain samples for, or to perform other non-interpretive functions involved in, field appeal inspection services or Board appeal inspection services. this clause (d)(3)(ii) shall not preclude agencies from forwarding file samples to the Service in accordance with § 800.154(b)(4)(v).

(iii) *Warehouseman's sample-lot inspection services.* Only employeees of an elevator that has a diverter-type mechanical sampler approved by the Service are eligible to enter into a contract with the service to obtain samples for warehouseman's sample-lot inspection services.

(iv) *Laboratory testing services.* Only the operator or a bona fide testing laboratory is eligible to enter into a contract with the Service for the testing of grain for official factors or official criteria.

(v) *Monitoring services.* Agencies and employees of agencies, organizations and employees of organizations, and other persons that regularly provide services to persons who export grain from the United States are eligible to enter into a contract with the Service for the performance of monitoring services on export grain in foreign ports if the agencies, organizations, and employees are under the direct supervision of employees of the Service during monitoring activities.

(e) *Conflicts of interest provisions.* (1) *General.* (i) *Prohibited conflicts of interest.* The interests and relationships identified in subparagraph (3) of this paragraph (e) are prohibited conflicts of interest and, except as provided in subparagraph (4) of this paragraph (e), if present, will render (A) an agency ineligible for a delegation or a designation to operate as an official agency; and (B) a contractor ineligible to enter into a contract with the Service.

(ii) *Exemptions.* Exemptions to the conflict of interest provisions are shown in subparagraph (4) of this paragraph (e).

(2) *Meaning of terms.* (i) The term "grain business," when used in this paragraph (d), shall include, but not be limited to, boards of trade, chambers of commerce, grain exchanges, and other trade groups that are composed, in whole or in part, of entities that are engaged in the commercial transportation, storage, handling, or merchandising of grain, the commmerical buying, selling, transporting, cleaning elevating, storing, binning, mixing, blending, drying, treating, fumigating, or other preparation of grain (other than as a grower of grain or the disposition of inspection samples); the cleaning, treating, or fitting of carriers or containers for the transporting or storing of grain; the merchandising of equipment for cleaning, drying, treating, fumigating, or other processing, handling, or storing of grain; the merchandising of grain inspection and weighing equipment (other than the buying or selling by an agency or official personnel of such equipment for their exclusive use in the performance of their official inspection or official Class X or Class Y weighing functions); and the commercial use of official inspection and official Class X or Class Y weighing functions. The producing of grain and the subsequent sale of the grain by a producer shall not be deemed to be a "grain business."

(ii) The term "interest," when used with respect to an individual, shall include the interest of a spouse, minor child, or blood relative who is a resident of the immediate household of the individual.

(iii) The term "related entity" means an entity that owns or controls, in whole or in substantial part, another entity, or is owned or controlled, in whole or in substantial part, by another entity; or two or more entities that are owned or controlled, in whole or in substantial part, by another entity.

(3) *Prohibited conflicts or interest.* Subject to any determination by the Administrator of the Service under Section 11(b)(5) of the Act, the following interests are prohibited conflicts of interest.

(i) *By agencies, contractors, and field offices.* No agency, contractor, or field office shall be employed in, or otherwise engaged in, or directly or indirectly have any stock or other financial interest in, any grain business or related entity; or give or accept any gratuity, as defined in § 800.187, to or from any grain business, any related entity, or any member, director, officer, or employee of any grain business or related entity, or otherwise have any conflict of interest specified in § 800.187

(ii) *By grain businesses.* No grain business shall operate, or be employed by, or directly or indirectly have any stock or other financial interest in, an agency or related entity; or give or accept any gratuity, as defined in § 800.187, to or from any agency, contractor, or field office, any related entity, or any member, director, officer, or employee of an agency, contractor, or field office, or related entity.

(iii) *By agency or contractor entities.* No entity that owns or controls an agency or contractor, and no entity related to such an entity, shall be employed in, or otherwise engaged in, or directly or indirectly have any stock or

other financial interest in, a grain business; or give or accept any gratuity, as defined in § 800.187, to or from any grain business, or any member, director, officer, or employee of any grain business or related entity.

(iv) *By grain business entities.* No entity that owns or controls a grain business, and no entity related to such an entity, shall operate, or be employed by, or directly or indirectly have any stock or other financial interest in an agency, contractor, or related entity; or give or accept any gratuity, as defined in § 800.187, to or from any agency, contractor, or related entity, or to or from any member, director, officer, or employee of an agency, contractor, or field office, or related entity.

(v) *By officers or employees of agencies, contractors, or field offices.* No member, director, officer, or employee of an agency, contractor, field office, or related entity, shall be employed in, or otherwise engaged in, or directly or indirectly have any stock or other financial interest in a grain business or related entity; give or accept any gratuity, as defined in § 800.187, to or from any grain business or related entity, or otherwise have a conflict of interest identified in § 800.187(b).

(vi) *By officers or employees of grain businesses.* No member, director, officer, or employee of a grain business or related entity shall operate, or be employed by, or directly or indirectly have any stock or other financial interest in, an agency, contractor, or field office, or related entity; or give or accept any gratuity, as defined in § 800.187, to or from any agency, contractor, or field office, or related entity, or to or from any member, director, officer, or employee of an agency, contractor, or field office, or related entity.

(vii) *By stockholders in an agency or contractor.* No stockholder in an incorporated agency, or contractor, or related entity shall be employed in, or otherwise engaged in, or be a substantial stockholder in any incorporated grain business or related entity; or directly or indirectly have any other kind of financial interest in a grain business or related entity; or give or accept any gratuity, as defined in § 800.187, to or from any grain business or related entity, or any member, director, officer, or employee of any grain business or related entity.

(viii) *By stockholders in a grain business.* No substantial stockholder in an incorporated grain business or related entity shall operate, or be employed by, or be a substantial stockholder in, or directly or indirectly have any other kind of financial interest in an agency, contractor, or field office or related entity; or give or accept any gratuity, as defined in § 800.187, to or from any agency, contractor, field office or related entity, or to or from any member, director, officer, or employee of an agency, contractor, field office, or related entity.

(4) *Exempt conflicts of interest.* (i) *By agencies, contractors, and field offices* (including related entities, members, directors, officers, or employees of agencies, contractors, or field offices, and related entities; and stockholders of agencies, contractors, and related entities, as prescribed in clauses (3)(iii), (v), and (vii) of this paragraph (e)).

(A) Using laboratory or office space or related facilities, owned or controlled, in whole or in part, by a grain business or related entity when the use of the space is deemed appropriate by the Service for the performance of onsite inspection or weighing services requested by an applicant, including but not limited to the inspection or weighing of bulk grain loaded aboard a ship, or for the performance of supervision or monitoring activities by the agency, contractor, or field office.

(B) Using inspection, weighing, transportation, and office equipment that is owned or controlled, in whole or in part, by a grain business or related entity when the use of the equipment is deemed appropriate by the Service for the performance of onsite inspection or weighing services requested by an applicant, including but not limited to the inspection or weighing of bulk grain loaded aboard a ship, or for the performance of supervision or monitoring activities by the agency, contractor, or field office.

(C) Bona fide financial institutions that have a financial relationship with one or more grain businesses or related entities shall not be precluded from having a financial relationship with an agency, contractor, or related agency.

(ii) *By grain businesses* (including related entities, members, directors, officers, or employees of grain businesses and related entities, and substantial stockholders in grain businesses and related entities, as prescribed in clauses (3) (iv), (vi), and (viii) of this paragraph (e)).

(A) Furnishing or providing laboratory or office space or related facilities to, or for use by, an agency, contractor, or field office, for the performance of onsite inspection or weighing services requested by an applicant, or for the performance of supervision or monitoring activities by an agency, contractor, or field office.

(B) Furnishing or providing inspection, weighing, transportation, or office equipment to, or for use by, an agency, contractor, or field office, for the performance of onsite inspection or weighing services requested by an applicant, or for the performance of supervision or monitoring activities by the agency, contractor, or field office.

§ 800.197 When and where to apply.

(a) *Delegations.* Applications from delegated States (see § 800.196) for authority to perform official inspection or official Class X or Class Y weighing functions at new export port locations (i.e., locations that become export port locations after May 20, 1978), shall be filed with the Service not less than 90 days before the State contemplates performing such functions.

(b) *Designations.* Applications for (1) authority to operate as a designated official agency; (2) a renewal of a designation; (3) a change in designation; (4) the suspension or cancellation of a designation; or (5) the return of a designation that has been voluntarily suspended, or suspended for cause, should be filed with the Service not less than 90 days before the effective date of the requested action.

(c) *Approvals.* (1) *Scale testing organization.* Applications for approval to operate as a scale testing organization should be filed with the Service not less than 90 days before the effective date of the requested action.

(2) *Weighing facility.* Applications for approval to operate as a weighing facility under the Act should be filed with the Service as far in advance of the effective date of the request as possible to permit the Service time to determine whether the application and the applicant are in compliance with the provisions of Section 7A(f) of the Act and §§ 800.196 through 800.198 of the regulations.

(d) *Contractual arrangements.* Applications for (1) a contract to perform specified official inspection, official Class X or Class Y weighing, or weighing equipment testing functions; (2) a renewal of a contract; and (3) a change in a contract should be filed with the service not less than 90 days before the effective date of the requested action, or as applicable, in accordance with the invitation to bid issued by the Department.

§ 800.198 How to apply.

(a) *General.* State or local governmental agencies, or other persons who desire to file an application for an action involving a designation, approval, or contractual arrangement, should submit a completed application to the Service on a form prescribed for the purpose and furnished by the Service. Each application shall (1) be typewritten or legibly written in English; (2) show the name and address of the applicant; (3) include the information required by the form and this § 800.198; (4) for applications for a designation or contractual arrangement, show whether the applicant, or any of its members, directors, officers, or em-

ployees, or any substantial stockholder, or any related entity, or any grain business, member, director, officer or employee of a grain business, or any substantial stockholder in a grain business or in a related entity, has any conflict of interest prohibited by § 800.196(e) so far as the applicant is aware; and (5) be signed by the applicant.

(b) *Applications for authority to operate as a delegated state agency at new locations, or a change in delegation of functions.* (1) *Application for authority to operate as a delegated State agency at new locations.* An application to operate as a delegated State agency at a new export port location, or for a change in delegation, should contain or show, or be accompanied by documents which contain or show, the following information; (i) whether the State is willing to provide official inspection and official Class X and Class Y weighing services at all export port locations; (ii) the official inspection and the official Class X or Class Y weighing functions the State desires to perform; (iii) the export port locations where the State desires to perform the functions; (iv) the period of time the state desires to perform the functions; (v) the expected annual volume of trucklot, carlot, bargelot, shiplot, and submitted sample inspections and weighings which the applicant estimates will be performed at each export port location in the State; (vi) the schedule of fees the State proposes to assess and a statement whether it would be necessary for users of the official service to agree to pay a yearly aggregate minimum amount; and (vii) a statement that, if the delegation is granted, the State will (A) comply in full with the provisions of the act, the regulations in this Part 800, the standards in Part 801 of this Chapter, and the instructions under the Act; (B) permit representatives of the Department or the Service to audit any or all of the applicant's operations; (C) not knowingly employ, retain in its employ, and assign to duties related to inspection or weighing of grain, any person who has been or is hereafter convicted of any violation of the Act or any offense proscribed by other Federal law involving the handling, weighing, or inspection of grain, and will immediately suspend any such employee upon the return of an indictment or the filing of a criminal information against the employee alleging any such offense; (D) specify to supervisory inspectors and weighers that their performance of all duties related to official inspection and official Class X or Class Y weighing functions is subject to the supervision of the Service; (E) submit to the Service such reports as may be requested by the service with respect to the management, staffing, budget, and operations of the agency; and (F) authorize their managers and supervisory inspectors and weighers to attend such meetings as may be held from time to time by the regional office for the managers and supervisory inspectors and weighers in the applicable region.

(2) *Application for a change in delegation.* An application for a change in a delegation of functions, including the deletion of some or all of the delegated functions at one or more export port locations, shall (i) specify the change that is desired in the delegation, (ii) show the reason for desiring the change, (iii) specify the time period during which the change is to be effective, and (iv) show or be accompanied by information that shows the need for the change.

(c) *Applications for a designation, or a change in designation, to operate as a designated official agency.* (1) *Application for authority to operate as a designated official agency, or a renewal of a designation.* An application for authority to operate as a designated official agency, for a renewal of a designation, for an amendment of a designation to include additional locations or additional responsibilities, or for the return of a designation that has been suspended either voluntarily or for cause should contain or show, or be accompanied by documents which contain or show, the following information:

(i) Whether the applicant is a governmental organization, business organization, or an individual;

(ii) If it is a governmental organization, whether it is an agency of a State, county, or other political subdivision of the United States;

(iii) If it is a business organization, the location of its principal office, if it is a corporation, a copy of the articles of incorporation, the names and addresses of the current corporate officers and directors, and the names and addresses of the substantial stockholders (as defined in Section 11 of the Act); if it is a partnership or unincorporated association, the names and addresses of the current officers and members; if it is an individual, the individual's place of residence; and, if it is sponsored by a trade organization, the nature and function of the trade organization, the names and addresses of the member firms, the managerial and technical controls that the trade organization exercises over the activities of the agency and over the agency's personnel, and the operating procedure for exercising managerial and technical controls (e.g., management by a grain committee that employs and directs the inspection and weighing personnel);

(iv) Whether the applicant is currently providing inspection or weighing services at any location and, if so, where;

(v) If the applicant is a State organization, whether it is willing to provide official inspection, weighing, or supervision of weighing services at all important grain markets in the State;

(vi) The official inspection or official Class X or Class Y weighing functions the applicant desires to perform;

(vii) The area and locations where the applicant desires to perform the functions;

(viii) The period of time the applicant desires to perform the functions;

(ix) The expected annual volume of trucklot, carlot, bargelot, shiplot, and submitted sample inspections and weighings that the applicant estimates will be performed in the area and at each location in the area;

(x) The names and addresses of the principal producers, merchandisers, processors, and other entities that desire official inspection or official Class X or Class Y weighing services on grain shipped from or to such locations;

(xi) A summary showing the inspection and weighing equipment and inspection and weighing facilities that the applicant would have, or have access to, at each such location;

(xii) The name of each licensee who would be located at each location, if known;

(xiii) The hours when service would be available at each location and whether "24-hour per day" service would be provided if requested by the users of the service;

(xiv) The schedule of fees the applicant proposes to assess and a statement showing whether it would be necessary for users of the official services to agree to pay a yearly aggregate minimum amount; and

(xv) A statement that if the designation is granted, the applicant will (A) comply in full with the provisions of the Act, the regulations in this Part 800, the standards in Part 801 of this Chapter, the performance requirements for equipment in Parts 802 and 803 of this Chapter, and the instructions under the Act; (B) permit representatives of the Department or the Service to audit any or all of the applicant's operations; (C) not knowingly employ, retain in its employ, and assign to duties related to inspection or weighing of grain, any person who has been or is hereafter convicted of any violation of the Act or any offense prohibited by other Federal law involving the handling, weighing, or inspection of grain; and (D) immediately suspend any such employee upon the return of an indictment or the filing of a criminal information against the employee alleging any such offense.

Each amendment of a designation to include additional locations or additional responsibilities shall be accompanied by the fee prescribed by the Service in accordance with the approved fee schedule. An application may show or be accompanied by information that shows the reasons the applicant is better qualified than other applicants to perform the official inspection, official Class X or Class Y weighing, and equipment testing functions it proposes to perform.

(2) *Application for a change in designation.* An application for a change in authority to operate as a designated official agency, or an amendment of a designation to effect a change in name or ownership, or a reduction in locations or in responsibilities, or for the voluntary suspension of a designation, shall (i) specify the change that is desired in the designation; (ii) show the reason for desiring the change; (iii) specify the time period during which the change is to be effective; and (iv) show or be accompanied by information that shows the need for the change. Each amendment of a designation to effect a change in name or in ownership, or a change or reduction in responsibilities, shall be accompanied by the fees prescribed by the Service in accordance with the approved fee schedule.

(d) *Application for approval to operate as a scale testing organization.* NOTE: The provisions of this paragraph (d) shall not be applicable with respect to State and local governmental scale testing organizations that were operative on September 29, 1977. An application for an approval to operate as a scale testing organization under the Act should contain or be accompanied by documents which show the following information:

(1) Whether the applicant is a governmental organization, business organization, or an individual;

(2) If a governmental organization, whether it is an agency of a State, county, or other political subdivision of the United States;

(3) If a business organization, the location of its principal office; if a corporation, the names and addresses of the current corporate officers and directors; if a partnership or unincorporated association, the names and addresses of the current officers and members; or if an individual, the individual's place of business or residence; and, if sponsored by a trade organization, the nature and function of the trade organization and the names and addresses of members;

(4) Whether the applicant is currently providing scale testing services at any location and, if so, where;

(5) If the applicant is a State organization, whether it is willing to provide official scale testing services at all important grain markets in the State;

(6) The scale testing functions the applicant desires to perform;

(7) The area and locations where the applicant desires to perform the functions;

(8) The period of time the applicant desires to perform the functions;

(9) The name of each employee who would be performing official scale testing functions and a statement that each such individual (i) is competent in accordance with the provisions of § 800.173(d)(3) and (ii) has a reputation for honesty and integrity;

(10) The hours when scale testing services would be available at each location where the applicant desires to perform scale testing functions and whether "24-hour per day" service would be provided if requested by the users of the service; and

(11) A statement that if the request for approval is granted, the applicant (i) will comply in full with the provisions of the Act, the regulations, and instructions issued under the Act; (ii) will permit representatives of the Department or the Service to audit any or all of the applicant's scale testing operations; (iii) in employing personnel to perform or supervise the performance of official scale testing functions under the Act, will not knowingly employ, retain in its employ and assign to scale testing duties, any person who has been or is hereafter convicted of any violation of the Act or any offense prohibited by other Federal law involving the handling, weighing, or inspection of grain; and (iv) will immediately suspend any such employee upon the return of an indictment, or the filing of a criminal information against the employee alleging any such offense.

Each application for approval to operate as a scale testing organization shall be accompanied by the fee specified by the Service.

(e) *Application for approval to operate as a weighing facility.* (1) A request for approval to operate as a weighing facility under the Act shall include: (i) the name and address of the owner of the facility; (ii) the name and address of the operator of the facility; (iii) the name of each individual who is employed by, at, or in the facility as a weigher and a statement that each such individual (A) has and can demonstrate a technical ability to operate grain weighing equipment and (B) has a reputation for honesty and integrity; (iv) a blueprint or similar drawing of the facility showing the location of (A) the loading, unloading, and grain handling systems; (B) the scale systems used in the weighing of grain; and (C) the bins, interstices, and other storage arrangements; and (v) the identification of each scale in the facility that is to be used for the weighing of grain under the Act.

(2) If the facility has an automated data processing system directly related to the handling or weighing of grain, the application shall show or be accompanied by information or documents which show (i) the identification and description of the system in terms of (A) the location, type, and model number of the hardware, including but not limited to the main frame, the terminals, and the printers; (B) a description of the software, including but not limited to a listing of the source language for, and flow charts of, the programs and subroutines (subprograms), and a description, including the formats, of the input, output, and related records; (C) a description of the method for recording changes or modifications in the system; and (D) a description of the procedures for testing the system; for safeguarding the system from the loss, misrepresentation, or manipulation of data; and for performing audit trails; and (ii) the instructions for operating the system including but not limited to (A) an operator's manual or instructions for operating and using the hardware and (B) a user's guide for operating and using the software. Requests for approval to operate as a weighing facility shall also show such related information as may be required by the Service.

(f) *Application for a contractual arrangement.* An application for a contract to perform specified appeal inspection services, warehouseman's sample-lot inspect services, laboratory services, equipment testing services, monitoring services, or other technical services shall (1) specify the services that the applicant desires to perform; (2) specify the period of time the applicant desires to perform the services (all contracts shall terminate annually unless otherwise provided in the contract); (3) state that if the contract is granted, charges for official functions performed for the Service by the applicant will be billed only to the Service (this provision is not applicable to applications for a contract for a warehouseman's sample-lot inspection service); and (4) state that the applicant will comply in full with the requirements of the Act, regulations, and instructions issued under the Act.

(g) *Additional information.* Upon request, an applicant shall furnish such additional related information as is deemed necessary by the Service for the consideration of the application.

(h) *Withdrawal of application.* An application filed pursuant to this § 800.198 may be withdrawn by an applicant at any time.

§ 800.199 Review of applications.

(a) *General.* Each application for a designation, approval, or contractual arrangement identified in § 800.198 shall be reviewed to determine whether the application is in compliance with §§ 800.197 and 800.198, whether the applicant is in compliance with § 800.196 and Sections 7, 7A, and 11 of the Act, and whether the requested action is consistent with the objectives of the Act (see § 800.2) and the need for official services. The review of an application for authority to operate as a designated agency shall include but not be limited to a determination with respect to whether the applicant is better able than any other applicant to provide official services in the proposed area of responsibility. The review of an application for authority to operate as an approved weighing facility shall include but not be limited to an onsite evaluation of the performance and accuracy of each scale that will be used for weighing grain under the Act and the performance of the grain loading, unloading, and related grain handling equipment and grain handling systems. If it is determined the (1) the application and the applicant are in compliance; (2) the fees, if any, prescribed by the Service and § 800.198 have been paid; and (3) the requested action is consistent with the objectives of the Act and the need for official services and the provisions of this § 800.199, the requesed delegation, designation, approval, or contractual arrangement may be granted as appropriate.

(b) *Application not in compliance.* If it is determined that an Application is not in compliance with §§ 800.197 and 800.198 and the noncompliance precludes a satisfactory review by the Service, the applicant shall be provided an opportunity to submit the need information. If the needed information is not or cannot be submitted by the applicant within a reasonable time, as determined by the Service, the application may be dismissed. When an application is dismissed, the Service shall promptly notify the applicant in writing of the reasons for the dismissal.

(c) *Applicant not in compliance.* If it is determined that an applicant is not in compliance with § 800.196 and Sections 7, 7A and 11 of the Act at the time of submitting the application; or will not be in compliance during the applicable period that would be covered by the requested delegation, designation, approval, or contractual arrangement; or that the requested action is not consistent with the objectives of the Act and the need for official services, the application shall be denied. The Service shall promptly notify the applicant of the reasons for the denial.

§ 800.200 Issuance and possession of delegations, designations, approvals, and contracts.

(a) *Issuing office.* All delegations, changes in delegations, designations, changes in designations, and approvals of scale testing organizations and weighing facilities shall be issued by the Service. All contracts shall be issue by the Department.

(b) *Condition for issuance.* Each delegation, designation, and approval and each contract for the performance of specified technical functions is issued on the condition that the State or local governmental agency, or person that is granted the delegation, designation, approval, or contract will, during the term of the delegation, designation, approval, or contract, comply with the applicable provisions of the Act, regulations, and instructions under the Act. All approvals of weighing facilities are issued on the condition that the facility will use only approved weighers or official personnel to perform or supervise the performance of Class X or Class Y weighing functions.

§ 800.201 Termination of delegations, designations, approvals, and contracts.

(a) *Delegations.* A delegation of authority issued by the Service to a State shall have no termination date but shall terminate whenever any of the following events occur: (1) there are no export port locations in the State for a period of 3 consecutive years; (2) the State requests that the delegation of authority be canceled; or (3) upon notice by the Service that the delegation of authority is being revoked by the Service. Notice of revocation by the Service will be given to a State as far as practicable in advance of the effective date of the notice.

(b) *Designations.* (1) *Triennial termination.* Designations of agencies shall terminate at such time as is specified by the Administrator, but not later than 3 years after the effective date of the designation.

(2) *Termination schedule.* Subject to the provisions of subparagraph (1) of this paragraph (b), designations to operate as an official agency shall terminate on the last day of the month shown in the following schedule:

Agency names beginning with	Termination date (last day of month shown)
A	January.
B	February.
C, D	March.
E, F, G	April.
H, I, J	May.
K, L	June.
M	July.
N, O, P, Q	August.
S	September.
R, T, U, V	October.
W	November.
X, Y, Z	December.

(3) *Termination notices.* Notices of termination shall be issued by the Service to designated agencies at least 60 days in advance of the termination date. The notices shall provide detailed instructions for requesting renewal of the designations. Failure to receive a notice from the Service shall not exempt designated agencies from the responsibility of having their designations renewed on or before the expiration date prescribed in this paragraph (b).

(4) *Renewal of designations.* Designations that are renewed shall show the date of renewal and the word "renewed."

(c) *Approvals.* (1) *Scale testing organizations. Note:* The provisions of this subparagraph (1) shall not be applicable with respect to State or local governmental scale testing organizations that were operating on September 29, 1977. Approvals of scale testing organizations shall terminate annually in accordance with the termination date shown on the approval: *Provided,* (i) That the approval shall terminate whenever the scale testing organization or any of its employees are convicted of any violation involving the handling, weighing, or inspection of grain under Title 18 of the United States Code or (ii) the scale testing organization fails to comply with any provision of the Act, the regulations, standards, or instructions issued under the Act. Notice of termination shall be issued by the Service to organizations at least 30 days in advance of the termination date.

(2) *Weighing facilities.* Approvals of weighing facilities shall have no termination date but shall terminate whenever any of the following events occur: (i) the facility ceases to operate as a grain storage, handling, or weighing facility; (ii) the facility requests that the approval be terminated; (iii) the facility (A) uses individuals who have not been or no longer are approved by the Service to perform or supervise the performance of functions related to official Class X or Class Y weighing and (B) uses equipment that has not been or no longer is approved by the Service for handling or weighing grain under the Act; (iv) the facility or any of its employees are convicted of any violation involving the handling, weighing, or inspection of grain under Title 18 of the United States Code; or (v) the facility otherwise fails to comply with any provision of the Act, the regulations, standards, or instructions issued under the Act. Reasonable notice of the termination shall be issued by the Service to the facility in advance of the termination.

(d) *Contracts.* Contracts with the Service shall terminate annually

unless otherwise provided in the contract.

§ 800.202 Voluntary cancellation or suspension of a delegation, designation, or contract.

(a) *Delegations, or designations.* A delegation or designation may, upon the request of the State, local governmental agency, or person that is granted the delegation or designation, be canceled or, in the case of a designation, may be suspended for a specified period of time. In the case of a suspension, the specified period cannot exceed the expiration date, if any, of the designation. Requests for a voluntary cancellation of a delegation or designation, or for a voluntary suspension of a designation, or for the return of a voluntarily suspended designation shall be submitted in accordance with § 800.198. A suspension of a designation, whether voluntarily or for cause, shall not affect the expiration date of the designation.

(b) *Contracts.* A contract may, upon the request of the State, local governmental agency, or person that entered into the contract with the Service, be canceled by the Department in accordance with the terms of the contract.

(c) *Cancellation after suspension.* If a designation has been voluntarily suspended for the remaining period of the designation and no request has been received for the return of the designation, or a request for the return of the designation has been dismissed or denied in accordance with the provisions of § 800.204, the designation shall be summarily canceled by the Service on the expiration date of the designation.

§ 800.203 Summary suspension or cancellation of designations.

(a) *Summary suspensions.* (1) *Designations.* An authority to operate as a designated official agency may be summarily suspended by the Service without a hearing if the designated agency temporarily ceases to operate as an inspection or weighing agency.

(2) *Written notice.* Written notice of a summary suspension shall be given by the Service to the appropriate State or local governmental agency or person at the time of the suspension and is effective upon receipt.

(3) *Reinstatement of suspended designation.* Upon request by a designated agency, a designation that has been summarily suspended pursuant to this § 800.203 may be reinstated by the Service upon finding that (i) the request by the agency was made prior to the expiration date of the designation; (ii) the agency is again operating or capable of operating as an inspection or weighing agency; (iii) the agency is otherwise eligible to be granted a designation; and (iv) the reinstatement is consistent with the objectives of the Act and the need for official services.

(b) *Summary cancellations of designations.* A designation of an agency may be summarily canceled by the Service without a hearing upon a finding that the agency (i) if an individual, has died or is imprisoned for a period in excess of 3 years; or (ii) if a partnership, has been dissolved; or (iii) if a corporation, has had its charter suspended, canceled, or otherwise terminated; or (iv) if an association or other business entity, has been dissolved or is no longer operational as an association or business entity. If a designation has been voluntarily suspended for the remaining period of the designation and no request has been received for the return of the designation, or a request for the return of the designation has been dismissed or denied in accordance with the provisions of § 800.204, the designation shall be summarily canceled by the Service on the expiration date shown on the designation. Written notice of a summary cancellation shall be given by the Service to the agency at the time of cancellation and is effective upon receipt.

§ 800.204 Revocation of delegation.

(a) *Revocation.* A delegation to a State to perform official inspection or official Class X or Class Y weighing functions at export port locations is subject to revocation in accordance with Section 7(e)(2) of the Act.

(b) *Procedure.* The Administrator may revoke a delegation to a State without a hearing, or at his discretion and at the request of the State, may afford the State an opportunity for an informal conference in accordance with the Rules of Practice in Part 808 of this Chapter.

(c) *Notice of action.* When a delegation is revoked, the Service shall promptly notify the State of the reason for the action. Revoked delegation shall be surrendered or otherwise disposed of in accordance with instructions issued by the Service.

§ 800.205 Refusal of renewal, or suspension, or revocation of designations for cause.

(a) *Cause for refusal or revocation.* A designation issued to an agency is subject to a refusal to renew, or a suspension, or a revocation, either temporarily or otherwise, by the Service (1) for causes prescribed in Section 7(g)(3) of the Act, or (2) if the agency or any of its employees are or have been convicted of any violation involving the handling, weighing, or inspection of grain under Title 18 of the United States Code.

(b) *Procedure for temporary suspension or refusal.* (1) *Provision for temporary suspension or refusal.* Whenever the Service has reason to believe there is cause for a temporary suspension, or a refusal of renewal, and deems such action to be in the best interest of the inspection and weighing system, a designation may be temporarily suspended, or the renewal of a designation may be temporarily refused, or the return of a designation that was suspended for a period that has expired may be temporarily refused, without first affording the agency, hereafter referred to in this § 800.205 as the "respondent," an opportunity for a hearing.

(2) *Notice and effective date of temporary suspension or refusal.* Notice of a temporary suspension or refusal shall be given to the respondent, and to the applicants for official services performed by the respondent, in accordance with paragraph (d) of this § 800.205. The temporary suspension or refusal shall be effective upon receipt of the notice by the respondent.

(3) *Termination of temporary suspension or refusal.* Within 30 business days following the issuance of a notice of temporary suspension or refusal of renewal, the Service shall (1) afford the respondent an opportunity for a hearing, or an informal conference in accordance with the provisions of paragraph (c) of this § 800.205, and shall continue the temporary suspension or refusal of renewal if it is found by the Service that (i) alternative managerial, staffing, financial, or operational arrangements satisfactory to the Service will not or cannot be affected by the respondent pending a final determination under paragraph (c) of this § 800.205 or (ii) the public health, interest, or safety require a continuation of the temporary suspension or refusal of renewal; or (2) afford the respondent the opportunity for a hearing under paragraph (c) of this § 800.205 and shall terminate the temporary suspension or refusal of renewal if it is found that (i) alternative managerial, staffing, financial, or operation arrangements satisfactory to the Service can be and are effected by the respondent and (ii) the public health, interest, and safety do not require a continuation of the temporary suspension or refusal of renewal; or (3) terminate the temporary suspension or refusal of renewal with a suitable written notice or warning under Section 14(b) of the Act; or (4) terminate the temporary action without prejudice. The Service shall promptly notify the respondent, and the applicants for official service performed by the respondent, of the action under this subparagraph (b)(3).

(c) *Procedure for other than temporary suspension or refusal.* Except as provided in paragraph (b) of this § 800.205, in refusing for cause to renew a designation or in suspending

or revoking for cause a designation and in refusing for cause to return a designation that was suspended for a period that has expired, the respondent shall be afforded an opportunity (1) for a hearing in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 554, 556, and 557) and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (7 CFR, Part 1, Subpart H) or (2) at the request of the respondent, an informal conference in accordance with § 800.2005 of the Rules of Practice Governing Informal Proceedings in Part 808 of this Chapter.

(d) *Notice of action.* When a designation is not renewed, or is suspended or revoked, or is not returned for cause under paragraphs (a) or (b) of this § 800.205, the Service shall promptly notify the respondent, and the applicants for the services performed by the respondent, of the reason for the action. Designations that are not renewed or are revoked shall be surrendered or otherwise disposed of in accordance with instructions issued by the Service.

§ 800.206 Inspection and weighing arrangements during suspension, and following cancellations and revocations of delegations or designations.

(a) *Export port locations.* If a delegation of authority to a State is canceled or revoked, official inspection and weighing services at the export port locations in the State will, upon request by an applicant, be provided by the Service.

(b) *Locations other than export port locations.* (1) *General.* If a designation of an agency is suspended, canceled, or revoked, or the renewal of a designation is refused, the Service shall, upon a finding of demonstrated need, arrange for a replacement agency. Insofar as practicable, the arrangements shall be made in advance of the suspension, cancellation, revocation, or the failure to renew.

(2) *Notice.* Notice of the apparent need and plans for a replacement agency shall be published in the *Federal Register,* and interested persons shall be given an opportunity to present their views. Reasonable notice of the final action designating a replacement agency shall be published in the FEDERAL REGISTER in advance of the effective date.

§ 800.207 Assignment of areas of responsibility to agencies; specifying service points; restrictions on services.

(a) *General.* Each delegated State agency, designated inspection agency, designated weighing agency, and field office shall be assigned an area of responsibility by the Service in accordance with the provisions of paragraph (b) of this § 800.207. Each area shall be identified by geographical or other boundaries. In the case of a State or local governmental agency, the area shall not exceed the jurisdictional boundaries of the State or the local government, as applicable.

(b) *Assigned areas of responsibility.* (1) *Agencies and field offices; export port locations.* At an export port location, the area of responsibility assigned to a delegated State agency or to a field office shall generally be whichever is greater of (i) the switching limits established and published by the railroads for the export port location or (ii) an area within a radius of 25 miles of the approximate center of the export port location.

(2) *Agencies and field offices; other than export port locations.* At a location other than an export port location, the area of responsibility assigned to a designated agency or to a field office shall generally be the area requested by the agency or by the field office, as applicable, except that the area (i) may not include any portion of an assigned area of responsibility involving an export port location or (i) subject to the provisions of § 800.195(b)(2), may not include any portion of an area of responsibility assigned to another agency or to another field office that is performing the same functions.

(c) *Responsibility for providing official services.* In each assigned area of responsibility, the delegated State agency, designated agency, or field office, as applicable, shall be responsible, insofar as practicable, for providing upon request of an applicant for service at any and all locations in the area, including but not limited to specified service points, official original inspection and reinspection services or official Class X or Class Y weighing services, as specified in the delegation, designation, or other authorization issued by the Service.

(d) *Restrictions on providing official services.* (1) *Area restriction, agencies.* Except with the approval of the appropriate field office, no agency may perform official functions at any location, including but not limited to specified service points, outside its assigned area of responsibility.

(2) *Area restriction, field offices.* Except with the approval of the appropriate regional office, no field office may perform official functions at locations, including but not limited to specified service points, outside its assigned area of responsibility.

(3) *Sample restrictions, agencies, and field offices.* Subject to the provisions of § 800.82(d), no agency or field office shall perform original inspection or reinspection functions on any official sample, or on any warehouseman's sample unless, at the time the sample was obtained, the grain from which the sample was obtained was physically located within the area of responsibility assigned to the agency or the field office, as applicable. *Note:* There are no jurisdictional restrictions on the original inspection or reinspection of submitted samples.

(e) *Specified service points, agencies, and field offices.* (1) *Export port locations.* In an assigned area of responsibility for a delegated agency and a field office, each export port location in the area shall be deemed to be a specified service point.

(2) *Other than export port locations.* In an assigned area of responsibility for a designated agency and a field office at other than export port locations, each place where a designated agency or a field office, as applicable, is located shall be deemed to be a specified service point. Additional specified service points may be approved by the service on a temporary, seasonal, or permanent basis upon request by an agency or a field office.

(3) *Stationing personnel at specified service points.* Each agency and each field office, as applicable, shall be responsible for the stationing of official personnel at specified service points in accordance with the terms of the designation issued by the Service.

(f) *Procedure for assigning areas, specifying points, and amending or changing assigned areas and specified points.* (1) *Action by agencies.* Applications by agencies for the assignment of areas of responsibility, for specifying service points, or for amending or changing an assigned area of responsibility, or specified service points, shall be made in accordance with §§ 800.197 and 800.198.

(2) *Action by Service.* Applications by agencies shall be reviewed by the Service in accordance with § 800.199, and assignments and amendments shall be made in accordance with § 800.200. In addition, after such consultation with interested persons as deemed warranted and a finding of need to meet the objectives of the Act, the Service may initiate action to assign areas, or specify service points, or amend or change assigned areas of responsibility or specified service points.

(3) *Termination of assignments.* Each assignment of an area of responsibility and each specified service point, shall terminate in accordance with §§ 800.201(b) and (c).

(4) *Suspension, cancellation, and revocation.* Each assignment of an area of responsibility, and each specification of a service point may be suspended, canceled, or revoked and is subject to a refusal to renew in accordance with §§ 800.202 through 800.206.

(5) *Information on assigned areas and specified points.* Notice of the assignment of areas, specification of service points, or amendments and changes in the assignment of areas of responsibility or in the specification of service points, shall be published by the Service in such form as is deemed appropriate. Information about assigned areas and specified service points may be obtained in accordance with § 800.10.

§ 800.208 Duties and responsibilities of agencies and approved weighing facilities.

(a) *General.* Each agency shall be responsible for the performance and the supervision of each of the duties assigned in § 800.185 to its official personnel, each approved weighing facility shall be responsible for the performance and the supervision of each of the duties and standards of conduct assigned in subparagraph (r)(1) of this § 800.208 to its approved weighers. In addition, each agency or facility shall, except as provided in paragraphs (c), (g), (k), (l), (m), (o), (p), (q), and (s), be responsible for the performance and the supervision of the duties shown in paragraphs (b) through (s) of this § 800.208.

(b) *Compliance with conditions for delegation, designation, or approval.* Each agency and approved weighing facility shall comply with the applicable conditions for delegation, designation, or approval under §§ 800.196 and 800.197, respectively.

(c) *Recruiting, training and staffing. Note:* The provision of this paragraph (c) shall not be applicable to approved weighing facilities. Upon request by the service, an agency shall adopt and effectuate an affirmative action plan to achieve compliance with the civil rights Act of 1964 and § 800.3(b).

(d) *Facilities and equipment.* Each agency and each approved weighing facility shall obtain and maintain such facilities and equipment as the Service determines are needed for the official inspection and official Class X or Class Y weighing functions performed by or at the agency or facility under the terms of the applicable delegation, designation, or approval.

(e) *Supervision and monitoring.* Each agency and approved weighing facility shall (1) supervise and monitor the activities shown in §§ 800.216 and 800.217 in accordance with instructions issued by the Service and (2) effect action as is necessary to assure that its employees are (i) not performing prohibited functions and (ii) not involved in any action prohibited by the Act, the regulations and instructions issued thereunder. (3) In addition, each agency shall report to the appropriate field office (i) information which shows or tends to show a violation of any provision of the Act, the regulations, or the instructions issued by the Service, and (ii) information of any instructions which have been issued to agency personnel by Service personnel or by any other person which are contrary to or inconsistent with the Act, the regulations, or the instructions issued by the Service.

(f) *Corrective action.* Each agency shall effect corrective action, as needed, of its personnel to assure the proper performance of official functions, the maintenance of approved standards of conduct, and the avoidance of actions prohibited by §§ 800.185 through 800.188.

(g) *Testing equipment by agencies and field offices.* (1) *Agencies and field offices.* Each agency and each field office that performs inspection or weighing functions shall, in accordance with instructions issued by the Service, (i) test the equipment that is used for official purposes by the agency or the field office, as applicable; and (ii) test the diverter-type mechanical samplers that are used for official sampling purposes in the area of responsibility assigned to the agency or the field office, as applicable. Tests performed by agencies on equipment used jointly by an agency and a field office may, upon a finding that the tests were conducted in an approved manner, be accepted by a field office in lieu of tests by the field office.

(2) *Exemption.* The provisions of this paragraph (g) shall not be applicable to the complete testing of weighing equipment.

(h) *Obtaining licenses and approvals.* Each agency shall assist its personnel in obtaining needed licenses for the performance of official inspection and official Class X or Class Y weighing functions and needed authorizations for affixing the signatures of their licensees. Each approved weighing facility shall be responsible for securing approval by the Service for each weigher employed by, at, or in the facility to perform or supervise the performance of official Class X or Class Y weighing functions.

(i) *Providing service.* (1) *Agency.* Each agency shall promptly provide, within its assigned area of responsibility, requested official inspection and official Class X or Class Y weighing services, including the prompt issuance of official certificates, in accordance with its delegation or designation and the provisions of § 800.185 and, upon request, help interested persons determine the kind, scope, and level of services they need or desire.

(2) *Approved weighing facilities.* (i) *Official services at request of applicant.* Each approved weighing facility, whether it is operated as a public or a private elevator, upon request by an applicant, shall promptly permit official inspection or official Class X or Class Y weighing services to be performed on grain shipped to the facility by the applicant or shipped to the applicant by the facility.

(ii) *Official weighing services at request of Service.* Upon a finding by the Service, an approved weighing facility shall, upon request by the Service, promptly permit official Class X or Class Y weighing services to be performed on all or specified lots of grain shipped to or from the facility during a specified period of time. The costs of the services shall, in such cases, be assessed to and paid by the approved weighing facility.

(j) *Observation of functions.* Each agency and each approved weighing facility must permit any person (or the person's agent) who has a financial interest in the grain that is being inspected or weighed under the Act to observe the sampling, inspection, weighing, loading, or unloading, as applicable, of the grain in accordance with Section 16 of the Act. Appropriate areas shall be mutually defined by the Service and facility operator or agency, as applicable, for the observation of each function. The areas shall be safe, shall afford a clear and unobstructed view of the performance of the functions, but shall not permit a close over-the-shoulder type of observation by the interested person (or the person's agent). Observation activities shall not obstruct, impede, or bias the performance of the official functions.

(k) *Changes in service.* Each agency shall promptly notify the appropriate field office of any change in the scope of the official inspection or official Class X or Class Y weighing services that the agency performs, or any suspension of official activities for such length of time as would impair the performance of official services at any location. Such notice shall be given, if possible, before the change occurs. The provisions of this paragraph (k) shall not be applicable to approved weighing facilities, but see subparagraph (r)(2) of this § 800.208.

(l) *Fees.* Each agency shall establish and collect fees only in accordance with the provisions of § 800.70.

(m) *Records (agencies).* Each agency shall keep records as required by § 800.145, including separate and complete accounts of all receipts for inspection and weighing services and all disbursements from such receipts, for purposes of audit by the Department of Agriculture or the Service.

(n) *Reports required (agencies and field offices only).* (1) *Volume report.* Each agency and each field office shall, in accordance with § 800.155 and instructions issued by the Service, periodically prepare an submit to the appropriate field office or regional office a report showing the kind and volume

of inspection or weighing services performed by the agency or the field office. Upon a showing of good cause, the requirements of this paragraph (n) may be temporarily waived in emergencies by a regional office.

(2) *Management report.* Each agency, in accordance with § 800.150, shall report such information regarding its ownership, management, and operation as may be required by the Service.

(3) *Reports of interest.* Each agency and field office shall report such information regarding the financial interests and employment practices of its employees as may be required by the Service. (The filing of such reports, or the filing of an application for a license, as provided in § 800.172, does not permit a licensee to have a conflict of interest not excepted by the Act or the regulations.)

(o) *Certificate control system (agencies and field offices only).* (1) *Requirements for systems.* (i) Each agency and each field office shall establish a certificate control system for (A) the standard form official certificates that they receive, issue, void, or otherwise render useless and (B) the special design weight certificates that they issue, void, or otherwise render useless. (ii) The system shall be subject to approval by the Service and shall consist of (A) maintaining a complete record as specified in § 800.155(c) of the numbers of the official certificates printed or received from any source; (B) storing or monitoring the storing of the unused certificates from fraudulent or unauthorized use; and (C) maintaining, in accordance with subparagraph (2) of this paragraph (o), a file copy of each certificate issued, voided, or otherwise rendered useless.

(2) *Requirements for file copies.* File copies shall be retained by certificate number, by date, or by carrier identification number for ready reference. In the case of an original inspection or weighing, the file copy shall consist of a true copy of the official certificate. In the case of a reinspection, appeal inspection, divided-lot, or corrected certificate, the file copy shall consist of a true copy of the reinspection, appeal inspection, divided-lot, or corrected certificate and, if surrendered, the original of the certificate that was superseded.

(p) *Avoiding conflicts of interest (agencies and field offices only).* Agencies and field offices shall at all times avoid acquiring any financial interest or engaging in any activity that would result in a violation of § 800.196, or a violation of Sections 7A and 11 of the Act. Agencies shall also prohibit the acquiring of any such interest or the engagement in any such activity by their employees and their employees' spouses, minor children, or blood relatives who reside in the immediate households of the employees.

(q) *Disposition of conflicting interests (agencies and field offices only).* (1) *Corrective action by agency.* Upon being informed that certain interest or employment is in conflict with official inspection or official Class X or Class Y weighing and that remedial action is required, an agency or an applicant for a designation shall take immediate action to end the conflict of interest and inform the Service of the action taken.

(2) *Requests for exceptions.* An agency or an applicant for a designation who believes that remedial action will cause undue economic hardship or other irreparable harm may request an exception by forwarding to the Service either directly or through the appropriate field office a written statement setting forth the facts, the circumstances, and the reason for requesting an exception.

(3) *Penalties.* If a final determination is made by the Service that a conflict of interest does exist and should not be excepted, failure to end the conflict of interest shall subject an agency to action against its delegation or designation, and criminal prosecution, and an applicant for a designation to the dismissal of the application.

(r) *Duties of approved weighing facilities.* (1) *Personnel.* (i) Each approved weighing facility shall (A) permit only official personnel, or approved weighers, to operate scales used in the weighing of grain under the Act; (B) permit official personnel to monitor grain loading, unloading, or handling operations that are an integral part of the weighing of grain under the Act; (C) require that when approved weighers operate the scales, the approved weighers and other employees who operate grain loading, unloading, and handling equipment perform their duties in accordance with §§ 800.95 through 800.104 and in accordance with instructions issued by the Service; (D) keep record of the duties of approved weighers and other persons who operate grain loading, unloading, and handling equipment employed by, at, or in the facility; (E) designate one or more supervisory employees to have direct responsibility for the activities of the approved weighers and other persons employed by, at, or in the facility; and (F) be responsible for the actions of approved weighers and other persons who perform the loading, unloading, or handling operations that are an integral part of the weighing of grain under the Act.

(ii) Each approved weighing facility shall be responsible for assuring that all approved weighers who operate scales and all persons employed by, at, or in the facility who operate grain loading, unloading, and handling equipment shall: (A) Execute diligently all instructions issued to them by the Service, either in writing or orally; *Provided,* However, that whenever feasible, such instructions shall be issued from the Service to the affected individuals through appropriate management officials at the facility; (B) Inform the Service, upon request, in full detail regarding inspection, weighing, or testing equipment used by them, or inspection or weighing services performed by them; and (C) Report to the appropriate field office (*1*) information which shows or tends to show a violation of any provision of the Act, the regulations, or the instructions issued by the Service and (*2*) information about any instructions which have been issued to them by official personnel or any other person which are contrary to or inconsistent with the Act, the regulations, or the instructions issued by the Service: *Provided,* However, that, whenever practicable, appropriate management officials at the facility may forward such reports on behalf of those individuals employed by the facility.

(iii) In addition, each approved weighing facility shall prohibit approved weighers who operate scales from: (A) performing official weighing functions unless approved by the Service to perform such functions; (B) engaging in criminal, dishonest, or notoriously disgraceful conduct that could jeopardize the integrity or the effective and objective operation of the function performed at the facility under authority of the Act; (C) smoking in prohibited areas in the facility, or otherwise performing official functions in an unsafe manner which could endanger other persons working in or about the premises; (D) refusing to give testimony or respond to questions in connection with official inquiries or investigations; and (E) violating any provisions of Section 13 of the Act.

(2) *Notification of change in facilities.* Prior to installing a new scale system or modifying an existing scale system, computer system, or handling system for use in the weighing of grain under the Act, the operator of an approved weighing facility shall submit to the appropriate agency or field office detailed information regarding the proposed installation or modification. The final approval of a new or a modified scale system, computer system, or handling system for use in weighing of grain under the Act will in all cases be based on an onsite test for accuracy and general operation.

(3) *Scale log.* A log book shall be maintained for each approved scale used for the weighing of grain under the Act. The identification of the scale

and all related information, including but not limited to scale test dates, scale failure, and scale repair, shall be recorded in the log. The log shall be kept at a convenient location in the approved weighing facility and shall be available to all official personnel.

(4) *Operation and maintenance of scales.* Each scale system and each related grain handling system used in the weighing of grain under the Act shall be operated and maintained in accordance with instructions issued by the manufacturer and by the Service.

(5) *Abnormal performance of scales.* Scales or scale systems that are broken or are otherwise performing in an abnormal manner shall not be used for weighing grain under the Act until the abnormal operation is corrected and the scales or the systems, as applicable, are found by the Service to operate in an approved manner.

(6) *Use of adjustments.* Adjustments in weight indicating devices shall not be made to correct for improper scale installations or for defective scale parts. Improper scale installations shall be corrected, and defective scale parts shall be replaced before a scale msy be used for weighing under the Act.

(7) *Assistance in applying test weights.* Each approved weighing facility shall provide whatever assistance is needed by official personnel and approved scale testing organizations in the testing of scales installed in the facility. The assistance shall include but not be limited to the applying and removing of test weights.

(8) *Retention of records.* Each approved weighing facility shall keep a complete file and record of (i) the Act, the regulations, the standards, and the instructions issued to the facility by the Service; (ii) the authority issued to the facility by the Service to operate as an approved weighing facility; (iii) the names of the approved weighers employed by, at, or in the facility; and (iv) the information required by § 800.25.

(s) *Prohibited activities by agencies and field offices.* In addition to the actions restricted or prohibited by Sections 7, 7A, and 13 of the Act, agencies and field offices are subject to the location, conduct, conflict of interest, and related provisions in §§ 800.186, 800.187, 800.188, 800.195, and 800.196.

§§ 800.209–800.214 [Reserved]

Supervision, Monitoring, and Equipment Testing

§ 800.215 Objectives in supervision, monitoring, and equipment testing.

(a) *Supervision.* The objective in supervision is to achieve and maintain an acceptable level of performance, in quality and quantity, for activities performed under the Act.

(b) *Monitoring.* The objective in monitoring is to help achieve the objectives of supervision.

(c) *Equipment testing.* The objective in equipment testing is to determine whether equipment used in performing official functions under the Act is operating in an approved manner.

(d) *Prototype equipment testing.* The objective in testing prototype or proposed equipment is to determine whether the equipment will improve the performance of activities under the Act.

§ 800.216 Activities that shall be supervised.

(a) *General.* Supervision of the activities described in this § 800.216 shall be performed in accordance with instructions issued by the Service.

(b) *Administrative activities.* Administrative activities subject to supervision include, but are not limited to (1) the providing of staffing, equipment, and facilities for the performance of authorized services; (2) dismissing requests for services and withholding requested services; (3) maintaining official records; (4) assessing and collecting fees; (5) rotating official personnel; (6) implementing instructions for (i) recruiting official personnel, (ii) training and supervising official and approved personnel, (iii) implementing work performance and work production standards, and (7) supervising and monitoring.

(c) *Technical activities.* (1) *Equipment testing activities.* Equipment testing activities subject to supervision include, but are not limited to (i) the implementing of (A) the equipment performance requirements in Parts 802 and 803 of this Chapter and (B) the instructions for the operation of equipment used under the Act and for the performance of equipment-testing activities and (ii) the performing by official personnel or by approved scale testing organizations of equipment-testing activities.

(2) *Inspection activities.* Inspection activities subject to supervision include, but are not limited to (i) the implementing of (A) the Official U.S. Standards for Grain in Part 801 of this Chapter, (B) official criteria, and (C) instructions for the performance of inspection activities and (ii) the performing by official personnel of stowage examination, sampling, laboratory testing, grading, and certification activities.

(3) *Weighing activities.* Weighing activities subject to supervision include, but are not limited to (i) the implementing of (A) uniform weighing procedures and (B) instructions for the performance of weighing activities and (ii) the performing (A) by official personnel of stowage examination, sampling (sacked grain), weighing, and certification activities and (B) by approved weighers of weighing activities.

(4) *Testing of prototype equipment activities.* Prototype equipment-testing activities subject to supervision include, but are not limited to (i) the implementing of instructions for the testing of prototype equipment, (ii) the testing by official personnel of prototype equipment, and (iii) the approving or denying of the use of prototype equipment for use under the Act.

(d) *Regulatory activities.* regulatory activities subject to supervision include, but are not limited to (1) the implementing of (i) regulations in this Part 800 and (ii) instructions for performing regulatory activities; (2) designation of agencies; (3) registration of export businesses; (4) licensing official personnel and approving weighers; (5) approving scale-testing organizations and weighers' facilities; (6) reporting and resolving prohibited conflicts of interest; (7) granting waivers under Sections 5(a)(1), 5(a)(2), and 11(b)(5) of the Act; and (8) investigating, reporting, and initiating proceedings for apparent violations of the Act or other statutes involving the handling, inspection, or weighing of grain.

§ 800.217 Activities that shall be monitored.

(a) *General.* Each of the administrative, technical, and regulatory activities identified in § 800.216 and the elevator and merchandising activities identified in this § 800.217 shall be monitored in accordance with instructions issued by the Service.

(b) *Grain merchandising activities.* Grain merchandising activities subject to monitoring for compliance with the Act include, but are not limited to (1) failing to promptly forward an export certificate (Section 5(a)(1)); (2) describing grain by other than official grades (Section 6(a)); (3) falsely describing export grain (Section 6(b)); (4) falsely making or using official certificates, forms, or marks (Sections 13(a)(1), 13(a)(2)); (5) making false quality or quantity representations about grain (Sections 13(a)(5), 13(a)(6), 13(a)(12)); and (6) selling export grain without a certificate of registration (Section 17A).

(c) *Grain handling activities.* Grain handling activities subject to monitoring for compliance with the Act include, but are not limited to (1) shipping export grain without inspection or weighing (Section 5(a)(1)); (2) transferring grain into or out of an export elevator at an export port location without official Class X weighing (Section 5(a)(2)); (3) violating any Federal law with respect to the handling, weighing, or inspection of grain (Section 10(a)); (4) deceptive loading, handling, weighing, or sampling of grain (Sections 13(a)(3), 13(a)(4)); and (5)

exporting grain without a certificate of registration (Section 17A).

(d) *Recordkeeping activities.* Elevator and merchandising recordkeeping activities subject to monitoring for compliance with the Act include those that are identified in Section 12(d) of the Act and § 800.25 of the regulations.

(e) *Monitoring inventories at export elevators at export port locations.* The Service will conduct an annual physical inventory of the stocks of grain in each export elevator at an export port location. In addition, the Service may conduct such additional inventories as may be needed to protect the integrity of the official weighing program. Inventories shall be performed in accordance with instructions issued by the Service.

(f) *Other activities.* Other activities subject to monitoring for compliance with the Act include, but are not to be limited to (1) conflicts of interest with official agencies or their employees (Section 11(b)); (2) providing access to elevator facilities and records (Section 12(d)); (3) improperly influencing or interfering with official personnel (Sections 13(a)(7), 13(a)(8)); (4) falsely representing that a person is official personnel (Section 13(a)(9)); (5) using false means in filing an application for services under the Act (Section 13(a)(10)); and (6) preventing interested persons from observing the loading, weighing, or sampling of grain (Section 13(a)(13)).

§ 800.218 Equipment that shall be tested.

(a) *General.* Testing of equipment and prototype equipment described in this § 800.218 shall be performed in accordance with instructions issued by the Service.

(b) *Inspection equipment.* Each unit of equipment used in the sampling, testing, or grading of grain under the Act, or in monitoring the inspection of grain under the Act, shall be examined to determine whether the equipment is functioning in an approved manner. In addition, each unit of equipment for which performance requirements have been established in Subpart C of this Part shall be tested for accuracy. For the purpose of this paragraph (b), diverter-type mechanical samplers used in obtaining warehouse's samples shall be deemed to be inspection equipment used under the Act.

(c) *Weighing equipment.* Each unit of equipment used in the weighing of grain under the Act or in monitoring the weighing of grain under the Act, each related grain handling system and each related computer system, if any, shall be examined to determine whether the equipment, the grain handling system, and the related computer system, if any, are functioning in an approved manner. In addition, each unit of equipment for which performance requirements have been established in Part 803 of this Chapter shall be tested for accuracy.

(d) *Prototype equipment.* (1) *At request of interested party.* Upon request of a financially interested party, and with the concurrence of the Administrator, prototype grain inspection or weighing equipment may be tested by the Service for possible use under the Act.

(2) *Determination by Service.* Upon a determination of need, the Service may develop, contract for, or purchase and test prototype grain inspection or weighing equipment for possible use under the Act.

§ 800.219 Review of rejection or disapproval of equipment.

Any person desiring to complain of an alleged unlawful, arbitrary, capricious, or unwarranted rejection or disapproval of equipment by official personnel, or other alleged discrepancy or abuse by official personnel or by approved scale testing organizations in the testing of equipment under the Act, may file a complaint with the Service in accordance with § 800.5 and the Informal Rules of Practice in Part 808 of this Chapter.

§ 800.220 Conditional approval on use of equipment.

Equipment that is in use under the Act of the effective date of this § 800.220 shall be deemed conditionally to have been (1) adopted and (2) approved by the Service for use under the Act. This conditional approval shall not bar a later rejection or disapproval of the equipment by the Service upon a determination that the equipment (i) should be rejected for use under the Act, or (ii) is not functioning in an approved manner, or (iii) is not producing results that are accurate within prescribed tolerances, or results that are otherwise consistent with the objectives of the Act.

PART 802—OFFICIAL PERFORMANCE REQUIREMENTS FOR GRAIN INSPECTION EQUIPMENT

Sec.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867; Pub. L. 95-113, 91 Stat. 1024 (7 U.S.C. 71 et seq).

§ 802.1 Applicability.

This Part 802 prescribes certain specifications, tolerances, or other technical requirements for grain inspection equipment and related sample handling systems used in performing official inspection functions under the U.S. Grain Standards Act. The requirements are based on and are in harmony with the unofficial requirements that have been and are being used by the Federal Grain Inspection Service in testing inspection equipment used in performing official inspection functions under the Act.

§ 802.2 Meaning of terms.

(a) *Construction.* Words used in the singular form in this Part 802 shall be deemed to impart the plural, and vice versa, as appropriate.

(b) *Definitions.* The definitions of terms in the U.S. Grain Standards Act and in Part 800 are applicable to such terms when used in this Part 802. For the purposes of this Part 802, unless the context requires otherwise, the following terms shall be construed, respectively, to have the meanings given for them below.

(1) *Avoirdupois weight.* A unit of weight based on the pound of 16 ounces.

(2) *Balances.* Laboratory devices used to manually, mechanically, or electronically measure and indicate the weight of a sample of grain or related material.

(3) *Barley pearler.* A laboratory device used to mechanically dehull kernels of barley.

(4) *Boerner divider.* A laboratory device used to mechanically divide a sample of grain into two or more representative portions.

(5) *Carter dockage tester.* A laboratory device used to mechanically separate dockage and foreign material from grain.

(6) *Direct comparison method.* An equipment testing procedure wherein given samples of grain are tested at one location using two or more units of the same inspection equipment, one unit of which shall be standard inspection equipment. (See also sample exchange method.)

(7) *Diverter-type mechanical sampler (primary).* A heavy-duty device used to obtain representative portions from a flowing stream of grain.

(8) *Diverter-type mechanical sampler (secondary).* A heavy-duty device used to periodically subdivide the portions of grain obtained with a diverter-type mechanical sampler (primary).

(9) *Master inspection equipment.* A unit of inspection equipment that is designated by the Federal Grain In-

spection Service for use in determining the accuracy of standard inspection equipment.

(10) *Mean deviation from the standard (MDS).* In testing inspection equipment for accuracy, the variation between (i) the average of the test results from the equipment that is being tested and (ii) the average of the test results from the standard or master equipment, as applicable.

(11) *Metric weight.* A unit of weight based on the kilogram of 1,000 grams.

(12) *Minimum acceptance tolerance.* An allowance established for use in determining whether new inspection equipment or newly reconditioned inspection equipment should be approved for use in performing official inspection functions.

(13) *Minimum maintenance tolerance.* An allowance established for use in determining whether inspection equipment, other than new or newly reconditioned inspection equipment, should be approved for use in performing official inspection functions.

(14) *Motomco moisture meter, model 919.* A laboratory device used to electronically measure the moisture content in a sample of grain.

(15) *Official inspection equipment.* Equipment approved by the Service and used by official personnel and approved personnel in performing inspection functions under the U.S. Grain Standards Act.

(16) *Sample exchange method.* An equipment testing procedure wherein given samples of grain are tested at different locations using two or more units of the same inspection equipment, one unit of which shall be standard inspection equipment. (See also diret comparison method.)

(17) *Sieves.* Laboratory devices with slots, holes, oblong or other perforations for use in manually or mechanically separating particles of various sizes.

(18) *Standard inspection equipment.* A unit of inspection equipment that is designated by the Federal Grain Inspection Service for use in determining the accuracy of official inspection equipment.

(19) *Test weight.* The avoirdupois weight of the grain or other material in a level-full Winchester bushel.

(20) *Test weight apparatus.* A laboratory device used to mechanically measure the test weight of grain.

(21) *Winchester bushel.* A container that has a capacity of 2,150.42 cubic inches (32 dry quarts).

§ 802.3 Minimum tolerances for balances.

The minimum acceptance and maintenance tolerances for balances used in performing official functions shall be:

Kind of balance	Minimum tolerance (Mean deviation from standard)
(a) Mettler, Model P	+/− 0.50 gram
(b) Pennsylvania Pennograph, Model 501	+/− 0.10 gram
(c) Shadograph, Model 4205	+/− 0.1 gram
(d) Toledo Computagram, Models 4030 and 4032	+/− 1.0 gram
(e) Torsion, Models 5055, SE-1, DLT-2-1, and DLW 2-1	+/− 0.50 of one graduated division on the weight indicator
(f) Torsion, Model PL-2	+/− 1.0 gram

§ 802.4 Minimum tolerances for barley pearlers.

The minimum acceptance and maintenance tolerances for barley pearlers used in performing official inspection functions shall be:

Item	Minimum tolerance (Mean deviation from standard)
(a) Timer switch	+/− 2.5 sec. of the assigned pearling time for the pearler
(b) Pearled portion	+/− 1.0 gram from the weight portion pearled in the standard pearler

§ 802.5 Minimum tolerances for Carter dockage testers.

The minimum acceptance and maintenance tolerances for Carter dockage testers used in performing official inspection functions shall be:

Item	Minimum tolerance (Mean deviation from standard—percent)
Air separation	+/− 0.10
Riddle separation	+/− 0.10
Sieve separation	+/− 0.10
Total separation	+/− 0.15

§ 802.6 Minimum tolerances for diverter-type mechanical samplers.

The minimum acceptance and maintenance tolerances for diverter-type mechanical samplers (primary, or primary and secondary, in combination) used in performing official inspection functions shall be +/− 10 percent mean deviation from the standard for a given official factor.

§ 802.7 Minimum tolerances for Motomco moisture meters.

The minimum acceptance and maintenance tolerances for Motomco moisture meters used in performing official inspection functions shall be:

(a) Board of Appeals and Review Master/Standard.

Dial setting	Minimum tolerance (Mean deviation from standard—percent moisture)	
	Direct comparison	Sample exchange
25	+/− 0.05	
50	+/− 0.05	
75	+/− 0.05	

(b) *All other meters.*

25	+/− 0.15	+/− 0.20
50	+/− 0.10	+/− 0.15
75	+/− 0.15	+/− 0.20

§ 802.8 Minimum tolerance for near-infrared reflectance (NIR) analyzers.

The minimum tolerances for NIR analyzers sieves used in performing official inspection functions shall be:

Test	Tolerance (percent)	
Protein (wheat)	Direct comparison	Sample exchange
Same ground and packed portion	0.1	
Different portions from same whole grain sample:		
4 sample average		0.35
20 sample average		0.20

§ 802.9 Minimum tolerance for sieve devices.

The minimum acceptance and maintenance tolerance for sieves used in performing official inspection functions shall be:

(a) Thickness of metal: +/− 0.0015 inch

(b) Accuracy of perforation: +/− 0.0005 inch

(c) Sieving accuracy:

Sieve description	Minimum tolerance (Mean deviation from standard—percent)	
	Direct comparison	Sample exchange
.064 × ¾ inch oblong	+/− 0.2	+/− 0.3
5/64 × ¾ inch slotted	+/− 0.3	+/− 0.5
5-1/2/64 × ¾ inch slotted	+/− 0.5	+/− 0.7
7/64 × ¾ inch slotted	+/− 0.7	+/− 1.0

§ 802.10 Minimum tolerances for test weight apparatus.

The minumum acceptance and maintenance tolerance for a test weight per bushel apparatus shall be:

Item	Minimum tolerance (Mean deviation from the standard)
(a) Beam accuracy	+/− 0.10 pound at any reading
(b) Weighing accuracy	+/− 0.15 pound at any reading

§ 802.11 Related design requirements.

(a) *Suitability.* The design, construction, and location of grain sampling and inspection equipment and related sample handling systems shall be suitable for the sampling and inspection activities for which the equipment will be used.

(b) *Durability.* The design, the construction, and the material used in grain sampling and inspection equipment and related sample handling systems shall insure that under normal operating conditions (1) operating parts will remain fully operable, (2) adjustments will remain reasonably constant, and (3) accuracy will be maintained between equipment test periods.

(c) *Identification and Marking.* (1) *Identification.* Each item of sampling and inspection equipment for which minimum tolerances have been established (see §§ 800.953 through 800.960) shall be permanently marked to show (i) the manufacturer's name, initials, or trademark, (ii) the serial number of the equipment, (iii) the identification of the model, the type, and the design or pattern of the equipment; (iv) for diverter-type mechanical samplers, the date the samplers were installed in their present location; and (v) for other equipment for which tolerances have been established, the date the equipment was manufactured.

(2) *Marking.* Each operational control for a diverter-type mechanical sampler and the related grain handling system, including but not limited to pushbuttons and switches, shall be conspicuously identified as to the equipment or activity controlled by the pushbotton or switch.

(3) *Lettering.* Each required identification and marking shall be (i) distinct and readily readable after the equipment is installed and (ii) shown in such a manner that the lettering will not become obliterated or illegible.

(d) *Repeatability.* Each unit of inspection equipment, when tested in accordance with §§ 800.218 through 800.220 of Part 800 of this Chapter, shall, within the tolerances prescribed in §§ 802.3 and 802.10, be capable of repeating its record results when the equipment is operated in its normal manner.

(e) *Security.* Each diverter-type mechanical sampler and each related sample handling system shall (1) provide a ready means of sealing to block unauthorized (i) adjustments or (ii) removal or changing of component parts or timing sequence without removal or breaking of the seals and (2) otherwise be designed, constructed, and installed in manner to prevent deception to any person.

(f) *Installation requirements.* (1) *Manufacturer's instructions.* Grain sampling and inspection equipment and sample handling systems shall be installed at a site approved by the Service in accordance with the manufacturer's instructions, including any instructions marked on the equipment or systems.

(2) *Foundations and supports.* Equipment and systems shall be so installed that neither the operation nor the performance of the sampling or inspection equipment or system will be adversely affected by the foundation, supports, or any other characteristic of the installation.

PART 803—OFFICIAL PERFORMANCE REQUIREMENTS FOR GRAIN-WEIGHING EQUIPMENT AND RELATED GRAIN-HANDLING SYSTEMS

Sec.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867; Pub. L. 95-113, 91 Stat. 1024 (7 U.S.C. 71 et seq.)

§ 803.0 Applicability.

The requirements set forth in this Subpart D describe certain specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems use in performing official weighing functions under the United States Grain Standards Act. The requirements are based on, and are in general agreement with, portions of the "Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices" adopted by the National Conference on Weights and Measures and published by the U.S. Department of Commerce, National Bureau of Standards (NBS), as Handbook 44, as well as documents from the Association of American Railroads, weighing bureaus, Terminal Grain Weighmasters Association, and other regulatory agencies.

§ 803.1 Meaning of terms.

(a) *Construction.* Words used in the singular form in this Part 803 shall be deemed to import the plural and vice versa, as appropriate. When a section; e.g., 803.4, is cited in this Part 803, it refers to the indicated section in this part.

(b) *Definitions.* For the purpose of this Part 803, unless the context requires otherwise, the following terms shall be construed, respectively, to have the meanings given for them below. The terms are shown in alphabetical order.

(1) *Acceptance tolerance.* A magnitude fixing the limit of allowable error or departure from true performance or value, as established by the Service.

(2) *Accurate.* A piece of equipment is "accurate" when its performance or value; that is, its indications, its deliveries, its recorded representations or its capacity or actual value, etc., as determined by tests made with suitable standards, conform to the standard within the applicable tolerances and other performance requirements. Equipment that fails so to conform is "inaccurate."

(3) *Antifriction point.* A sharp, slight projection formed on the knife-edge line of a pivot or inserted in or attached to a lever for contacting a Thrust Plate.

(4) *Approach rail.* One of the rails of track approaching a scale.

(5) *Approval seal.* A label, tag, stamped or etched impression, or the like, indicating official approval of a device. (See also security seal.)

(6) *Automatic zero reset.* A means or circuit to return an indicator to zero from any reading within the nominal capacity of the scale. The command can be programmed as required and thus can be automatic as well as operator initiated.

(7) *Avoirdupois weight.* A unit of weight based on the pound of 16 ounces (7000 grains) commonly used in the United States for official weighing of all commodities except precious stones, precious metals, and drugs.

(8) *Balance indicator.* An accessory designed to magnify the indication and to indicate, by means of the relative positions of an indicator and a fixed reference, whether the weight of the applied load is greater or less than, or equal to, the weight indication; sometimes graduated in weight

units. A reading face of an Over-Under Device, provided with but one graduation positioned approximately at its center.

(9) *Basic tolerance.* Basic tolerances are those tolerances on underregistration and on overregistration, or in excess and in deficiency, that have been established by the Service for particular device under all normal tests. Basic tolerances include minimum tolerance value when these are specified.

(10) *Capacity.* With respect to a scale, the heaviest specified load that can be applied to the load-receiving element.

(11) *Correct.* A piece of equipment is "correct" when, in addition to being accurate, it meets all applicable specifications and requirements. Equipment that fails to meet any of the requirements for correct equipment is "incorrect."

(12) *Counterpoise weight.* An adjusted, removable, (usually) slotted weight, intended to counterpoise an applied load of designed weight value. Sometimes also colloquially called Counterweight.

(13) *Damping device.* A device for arresting of an oscillation by progressively diminishing its amplitude.

(14) *Dead rail.* Either rail of the independent track provided over a railway track scale for the movement of locomotives and cars not to be weighed.

(15) *Deficiency.* See Excess and deficiency.

(16) *Digital indications (or recordings).* Refers to a system of indication or recording of the selector type or one that advances intermittently in which all values are presented digitally or in numbers. In a digital indicating or recording element, or in digital representation, there are no graduations.

(17) *Electromagnetic interference (EMI).* Electrical disturbances which propagate into electronic and electrical circuits and cause deviations from the normally expected performance. The frequency range of the disturbance covers the entire electromagnetic spectrum.

(18) *Electronic scale.* Any scale in which the restoring force is a transducer which converts force into an electrical signal proportional to weight and presents the information in digital or analog form.

(19) *Excess and deficiency.* When an instrument or device is of such a character that it has a value of its own that can be determined, its error is said to by "in excess" or "in deficiency" depending upon whether its actual value is, respectively, greater or less than its nominal value. Examples of instruments having errors "in excess" are: A linear measure that is too long, a liquid measure that is too large, and a weight that is "heavy." Examples of instruments having errors "in deficiency" are: A lubricating-oil bottle that is too small, a vehicle-tank compartment that is too small, and a weight that is "light."

(20) *Division.* A defining line, or one of the lines defining the subdivisions of a gradutated series. The term includes such special forms as raised or intended or scored reference "lines" and special characters such as dots.

(21) *Grain handling system.* The physical arrangement including equipment, devices, and structures whereby grain is weighed with one or more scales and delivered or conveyed to a carrier, or unloaded from a carrier or container and delivered to one or more scales to be weighed.

(22) *Official grain weighing equipment or device (or weighing equipment or device).* Any scale system used in weighing grain under the U.S. Grain Standards Act.

(23) *Hanging scale.* Any scale designed to be hung from an overhead support, generally whose load-receiving element is a self-cleaning hopper with an outlet gate.

(24) *Hopper scale.* A scale designed for the weighing or granular materials in bulk, whose load-receiving element is a self-cleaning hopper with an outlet gate.

(25) *Indicating element.* An element incorporated in a weighing or measuring device by means of which its performance relative to quantity is "read" from the device itself as, for example, a weighbeam-and-poise combination, a digital indicator, and the like.

(26) *Interlock.* A mechanism designed to prevent an action or indicate the presence of an occurrence in a scale system or a grain handling system.

(27) *Levertronic scale.* A scale in which the indicating and the recording devices can be activated either manually or electronically and which generally has one load cell mounted in the lever system.

(28) *Load-receiving element.* That element of a scale which is provided to receive the load to be weighed.

(29) *Maintenance tolerance.* A tolerance for application under test conditions to a device in service, usually applied to errors "as found." Sometimes also called "users" tolerance.

(30) *Manual scale.* A scale in which the weight-indicating and the weight-recording devices are activated by hand.

(31) *Metric weight.* A unit system of weight based on the kilogram of 1,000 grams.

(32) *Minimum division.* The value of the smallest unit that can be indicated or recorded by a digital device in normal operation.

(33) *Minimum test load.* The minimum allowable weight used for testing the accuracy of a scale.

(34) *Minimum tolerance.* Minimum tolerances are the smallest values that can be applied to a scale. Minimum tolerances are determined on the basis of the value of the minimum graduated interval or the nominal or reading capacity of the scale.

(35) *Mode of operation.* The method of activating a scale-indicating device and a scale-recording device; i.e., manual, automatic, semi-automatic, and the like.

(36) *Motion detection.* The process of sensing a rate of change of applied load to determine when a given weighing system has reacted to a state of equilibrium.

(37) *Multiple.* (i) Lever Ratio.

(ii) In a lever train, the ratio of the applied load to the counterforce required at a given knife-edge in the train; hence, the product of the ratios of the involved levers.

(iii) With respect to a counterpoise or unit weight, the ratio of the applied load which the weight is intended to counterpoise to the nominal value of the weight.

(38) *Nominal.* Refers to "intended" or "named" or "stated" as opposed to "actual." For example, "the nominal value of something is the value that it is supposed or intended to have, the value that it is claimed or stated to have, or the value by which it is commonly known." Thus, "1-pound weight," "1-gallon measure," "1-yard indication," and "500-pound scale" are statements of nominal values; corresponding actual values may differ from these by greater or lesser amounts.

(39) *Nose iron.* A slidably-mounted, manually adjusted pivot assembly for changing the multiple of a lever, determined on the basis of the value of the minimum graduated interval or the nominal or reading capacity of the scale.

(40) *Out-of-zero balance.* A weight indication, weight representation other than zero when there is no load on the scale load-receiving element.

(41) *Overregistration.* An instrument or device is said to be in the direction of the overregistration when it records or indicates more than the true value of the applied load.

(42) *Parallax.* The apparent displacement, or apparent difference in height or width, of a graduation or other object with respect to a fixed reference, as viewed from different points.

(43) *Pendulum.* In general, a body suspended from a fixed point so as to swing freely to and fro or in an especially restricted sense; and with respect to certain types of scales, an element consisting of a mass and a rigid

arm connecting the mass to an axis of rotation.

(44) *Performance requirements.* Performance requirements include all tolerance requirements and, in the case of nonautomatic-indicating scales, sensitivity requirements (SR).

(45) *Platform scale.* A scale whose load-receiving element is a platform.

(46) *Poise.* A movable weight mounted upon or suspended from a weighbeam bar and used in combination with graduations, and frequently with notches, on the bar to indicate weight values.

(47) *Potentiometer.* A resistance unit having a variable or sliding contact which is positioned by the rotation or sliding of a shaft. The motion of the shaft is an indication of that portion of the total resistance which is between the contact and each end of the potentiometer.

(48) *Primary indicating or recording element.* The term "primary" is applied to those principal indicating elements (visual) and recording elements that are designed to, or may, be used by the operator in the normal commercial use of a device. The term "primary" is applied to any elements that may be the determining factor in arriving at the representation when the device is used commercially. (Examples of primary elements are the visual indicators for meters or scales not equipped with ticket printers or other recording elements and both the visual indicators and the ticket printers or other recording elements for meters or scales so equipped.) The term "primary" is not applied to such auxillary elements as, for example, the totaling register or the means for producing a running record of successive weighing operations, these elements being supplementary to those that are the determining factors in representations of individual deliveries or weights.

(48) *Railroad track scale.* A scale especially designed for weighing railway cars.

(50) *Radio frequency interference (RFI).* Radio frequency is a type of electrical disturbance which, when introduced into electronic and electrical circuits, may cause deviations from the normally expected performance.

(51) *Reading edge.* With respect to certain forms of poises, the edge intended as the index.

(52) *Recorded representations.* Refers to the printed, embossed, or other representation that is recorded as a quantity by a weighing or measuring device.

(53) *Recording element.* An element incorporated in a weighing or measuring device by means of which its performance relative to quantity is permanently recorded on a tape, ticket card or the like in the form of a printed, stamped, punched, or perforated representation.

(54) *Repeatability.* The degree of reproducibility among several independent measurements of the same test load under specified conditions.

(55) *Scale (or grain scale).* An instrument designed for use in determining the weight of grain either in bulk, sacks, or containers, and consisting of a load-receiving device, a weight-indicating device, and a weight-recording device.

(56) *Scale system.* A system for weighing grain, including the scale and all parts of the scale, and all equipment and structures that are immediately associated with, related to, or are an integral part of the system whereby grain is delivered to the scale, is weighed, and is removed from the scale.

(57) *Seal.* See approval seal, security seal.

(58) *Sectional capacity.* The greatest live load which may be divided equally on the load pivots or load cells of a section without inducing stresses in any member in excess of the working stresses allowed for the load cells or levers and materials involved.

(59) *Security seal.* A lead-and-wire seal, or similar device, attached to a device for protection against access, removal, or adjustment (see also approval seal).

(60) *Sensitivity requirement.* A performance requirement for a non-automatic indicating scale; specifically, the minimum change in the position of rest of the indicating element of the scale in response to the increase or decrease, by a specified amount, of the test-weight load on the load-receiving element of the scale.

(61) *Specification.* A requirement usually dealing with the design construction or marking of a weighing or measuring device. Specifications are primarily directed to the manufacturers of devices.

(62) *Tare mechanism (Tare Bar).* A weighbeam bar intended primarily for use in setting off or balancing the weight of an empty container, vehicle, etc.

(63) *Tolerance.* A value fixing the limit of allowable error or departure from true performance or value. (See also basic tolerances.)

(64) *Trig loop.* The fixture through which the tip of the weighbeam projects in usual construction, designed to restrict vertical angular motion of the weighbeam to designed limits.

(65) *Underregistration.* An instrument or device is said to be in the direction of underregistration when it records or indicates less than the true value of the applied load.

(66) *Unit weights.* A counterpoise weight of a Unit Weight Scale. Sometimes also called Drop Weight.

(67) *User requirement.* A requirement dealing with the selection, installation, use, or maintenance of a weighing device. User requirements are primarily directed to the users of devices.

(68) *Vehicle scale.* A scale designed for use in determining the weight of bulk grain in a motorized vehicle or in a trailer drawn by a motorized vehicle.

(69) *Weighbeam.* In a scale of other than the automatic indicating or automatic recording types the element whose angular position denotes the balance condition. In a more restricted sense, the device or assembly upon which by the manipulation of poises and/or counterpoise weights, the applied load is counterpoised and its weight value indicated. Sometimes also colloquially called Beam.

(70) *Weighbridge.* In a large-capacity scale, the structural frame carried by the main bearings and which supports the load-receiving element.

(71) Weight.

(i) The force with which a mass is attracted toward the center of the earth by gravity. The True Weight of an object is its weight as determined in a vacuum. The Apparent Weight in Air of an object is its weight determined in air, and is less than the True Weight by an amount equal to the true weight of the air displaced by the object.

(ii) An object usually of metal, having a definite mass, designed for weighing or testing purposes, as a counterpoise weight, a test weight, etc.

(72) *Zero adjustment.* In a scale, a process or a means to bring about an accurate zero-load balance.

(73) *Zero-load balance.*

(i) Zero-load balance for an automatic-indicating scale is a condition in which:

(A) the indicator is at rest at or oscillates through approximately equal arcs above and below the center of a trig loop,

(B) the weighbeam or lever system is at rest at or oscillates through approximately equal arcs above and below a horizotal position or a position midway between limiting stops, or

(C) the indicator of a balance indicator is at rest at or oscillates through approximately equal arcs on either side of the zero graduation.

(ii) Zero-load balance for a recording scale is a condition in which the scale will record a representation of zero load.

(74) *Zone of uncertainty.* The zone between adjacent increments on a digital device in which the value of either of the adjacent increments may be displayed.

§ 803.2 General requirements.

(a) *Identification.* All equipment except weights shall be clearly and permanently marked on a surface visi-

ble after installation for purposes of identification with the name, initials, or trademark of the manufacturer and with the manufacturer's designation and nonrepetitive serial number that positively identifies the pattern or the design of the device. (Nonretroactive as of January 1, 1977.)

(b) *Facilitation of fraud.* All equipment and all mechanisms and devices attached thereto or used in connection therewith shall be so constructed, assembled, and installed for use that they do not, in the opinion of the Service facilities the perpetration of fraud.

(c) *Permanence.* All equipment and markings shall be of such materials, design, and construction as to assure that under normal operating conditions:

(1) Accuracy will be maintained;

(2) Operating parts will continue to function as intended;

(3) Adjustments will remain permanent; and

(4) Graduations, indications, or recorded representations and their defining figures, words and symbols, markings and instructions shall be distinct and easily readable and of such character that they will not become obliterated or illegible. Undue stresses, deflections, or distortions of parts shall not occur to the extent that accuracy or permanence is detrimentally affected.

(d) *Protection from environmental factors.* The indicating elements, lever system or load cells, and the load-receiving element of a scale shall be adequately protected from environmental factors such as wind, weather, radio frequency interference (RFI), and electromagnetic interference (EMI) which may adversely affect the operation or performance of the device.

(e) *Abnormal performance.* Unstable indications or other abnormal equipment performance observed during operation shall be brought to the attention of the equipment's owner or owner's representative. If immediate correction cannot be made, the scale shall be taken out of service until corrective action is taken and the accuracy of the scale recertified.

(f) *Adjustments.* Weighing elements or components that are adjustable shall be adjusted only to correct the conditions they are designed to control and shall not be adjusted to compensate for defective and abnormal installation. Any faulty installation conditions shall be corrected before any adjustments are undertaken. Whenever equipment is adjusted, the adjustments shall be made so as to bring performance errors as close as practicable to zero value.

(g) *Suitability of equipment.* Official grain weighing equipment shall be suitable for the operation for which it is to be used and shall conform to the requirements of these regulations with respect to elements of its design, including but not limited to its capacity; its computing capability; the character, number, size and location of its indicating or recording elements; and the value of its smallest division.

(h) *Installation.* A device shall be installed in accordance with the manufacturer's instructions, including any instructions marked on the device. A device installed in a fixed location shall be so installed that neither its operation nor its performance will be adversely affected by any characteristic of the foundation, supports, or any other detail of the installation.

(i) *Installation of indicating or recording element.* A device shall be so installed that there is no obstruction between a primary indicating and recording element and the load-receiving element; otherwise there shall be convenient and permanently installed means for direct communication, oral or visual, between an individual located at a primary indicating or recording element and an individual located at the load-receiving element.

(j) *"Retroactive" and "nonretroactive" requirements.* (1) "Retroactive Requirements" are enforceable with respect to all equipment and are listed at the end of each regulation where necessary; i.e., "(Retroactive as of January 1, 1981)."

(2) "Nonretroactive Requirements" are enforceable on equipment installed after the effective date and are not enforceable with respect to equipment that is in official service as of the effective date. Nonretroactive requirements are listed at the end of each regulation where necessary; i.e., "(Nonretroactive as of 1976)."

(3) All equipment must comply with all of the regulations as of January 1, 1981.

(k) *Method of operation.* Equipment shall be operated only in the manner that is obviously indicated by its construction or that is indicated by instructions on the equipment. Manufacturers are required to supply complete detailed operating instructions with the equipment and to the Service.

(l) *Associated and nonassociated equipment.* A device shall meet all performance requirements when associated or nonassociated equipment is operated at the same time in its usual and customary manner and location.

(m) *Maintenance of equipment.* All equipment in service and all mechanisms and devices attached thereto or used in connection therewith shall continuously be maintained in proper operating condition throughout the period of such service. Equipment in service at a single place of business found to be in error predominantly in a direction favorable to the device user and near the tolerance limits shall not be considered "maintained in a proper operating condition."

(n) *Security.* Each scale and the related grain handling system shall (1) have a ready means of sealing to prevent unauthorized adjustments or removal or changing of component parts and (2) be designed, constructed, and installed in a manner to prevent inaccurate or deceptive weighing.

(o) *Repeatability.* Each scale when operated in accordance with the manufacturer's instructions will be capable of repeating its indicated and recorded weight representations within the tolerances prescribed in § 803.10.

(p) *Interlocks.* To assure correct operation, each automatically operated hopper scale and its related grain handling system shall have operating interlocks to provide for the following:

(1) *Flow of grain.* Grain cannot be cycled and weighed if the weight-recording device of the scale is:

(i) Disconnected,

(ii) Inoperative, or

(iii) Fails to print the displayed weight.

(2) *Printing.* The weight-recording device on the scale cannot print a weight if either of the gates leading to or from the scale is open;

(3) *Scale.* The scale is operated in the proper sequence of operation in all modes of operation; or

(4) *Lifts.* There shall be means to activate the scale and the weight-recording device only when the scale platform is in its normal weighing position or is clear of any obstruction.

(q) *Weight entries to recording devices.* The displayed weight shall be entered into automatic recording devices only electronically and directly from the related weighing instrument.

(r) *Retention of visual weight.* All grain weighing devices shall be designed so that the visually indicated weight shall remain visually available to the operator until completion of its printed record.

(s) *Change in mode of operation.* All grain weighing automatic hopper scales shall be designed so that each change in the mode of operation is indicated on the printed record by a symbol or word that accurately describes the mode of operation which the scale is in; i.e., A-Automatic, M-Manual, SA-Semi-Automatic. (Nonretroactive and enforceable as of January 1, 1980.)

§ 803.3 Design of indicating and recording elements and of recording representations.

(a) *Indicating and recording elements.* All weighing devices shall be provided with indicating and recording elements appropriate in design and adequate in amount. Primary indica-

tions and recorded representations shall be clear, definite, accurate, and easily read under any conditions of normal operation of the device.

(b) *Digital indication and representation.* Digital elements shall be so designed that:

(1) All digital values in a system agree with one another,

(2) A digital value coincides with its associated analog value to the nearest minimum division,

(3) A digital value shall "round off" to the nearest minimum division that can be indicated or recorded, and

(4) The zone of uncertainty on digital indicating scales shall not be greater than 0.3 of the value of the minimum operating division.

(c) *Analog and digital indications.* All components of the same element used in combination (such as a dial and unit weight) shall not differ by an amount greater than the applicable tolerance at any given test load.

(d) *Capacity indication.* When the net load applied to the load-receiving element is in excess of 105 percent of the capacity of the system:

(1) The digital indicating element shall not display any weight values;

(2) The recorded representation shall clearly indicate that the system is in an overload condition; i.e., "Overload." (Nonretroactive and enforceable as of January 1, 1980, and to become retroactive as of January 1, 1981.)

(e) *Size and character.* In any series of divisions, indications, or recorded representations, corresponding divisions and units shall be uniform in size and character. Divisions, indications, or recorded representations which are subordinate to or of a lesser value than others with which they are associated shall be appropriately portrayed or designated.

(f) *Values.* If divisions, indications, or recorded representations are intended to have specific values, these shall be adequately defined by a sufficient number of figures, words, symbols, or combinations thereof; uniformly placed with reference to the divisions, indications, or recorded representations; and as close thereto as practicable, but not so positioned as to interfere with the accuracy of reading.

(g) *Values of graduated intervals or increments.* In any series of divisions, indications, or recorded representations, the values of the graduated intervals or increments shall be uniform throughout the series.

(h) *Repeatability of indications.* A device shall be capable of repeating within prescribed tolerances its indicated and recorded representations. This requirement shall be met irrespective of repeated manipulation of any element of the device in a manner approximating normal usage (including displacement of the indicating elements to the full extent allowed by the construction of the device and repeated operation of a locking or relieving mechanism) and of the repeated performance of steps or operations that are embraced in the testing procedure.

(i) *Recorded representations.* Insofar as they are appropriate, the requirements for indicating and recording elements shall be applicable also to recorded representations. All recorded values shall be printed digitally.

(j) *Remote indications and recorded representations.* Remote indications and recorded representations shall be clear, definite, accurate, and easily read under any conditions of normal operation of the device and shall agree with primary indications.

(k) *Markings, operational controls, indications, and features.* All operational controls, indications, and features, including, but not limited to switches, lights, displays, pushbuttons, and other means, shall be clearly and definitely identified.

(l) *Zero indication.* Provision shall be made on all scales equipped with indicating or recording elements to indicate and record a zero-balance condition, and on an automatic-indicating scale or balance indicator to indicate or record an out-out-balance condition on both sides of zero. a digital zero indication shall represent a balance condition that is within plus or minus one-half the value of the minimum division that can be indicated and recorded.

(m) *Dial divisions.* Shall be so varied in length that they may be conveniently read.

(n) *Width-dial graduation.* In any series of graduations, the width of a graduation shall in no case be greater than the width of the minimum clear interval between graduations, and the width of main graduations shall be not more than 50 percent greater than the width of subordinate graduations. Graduations shall in no case be less than 0.008 inch in width.

(o) *Dial divisions—clear interval between divisions.* The clear interval shall be not less than 0.02 inch for each division. If the divisions are not parallel, the measurement shall be made:

(1) Along the line of relative movement between the divisions and the end of the indicator or

(2) If the indicator is continuous, at the point of widest separation of the divisions.

(p) *Dial indicator symmetry.* The index of an indicator shall be symmetrical with respect to the divisions with which it is associated and at least throughout that portion of its length that is associated with the divisions.

(q) *Dial indicator length.* The index of an indicator shall reach the finest divisions with which it is used, unless the indicator and the divisions are in the same plane, in which case the distance between the end of the indicator and the ends of the divisions, measured along the line of the divisions, shall be not more than 0.04 inch.

(r) *Dial indicator width.* The width of the index of an indicator in relation to the series of divisions with which it is used shall be not greater than:

(1) The width of the widest division,

(2) The width of the minimum clear interval between weight divisions, and

(3) Three-fourths of the width of the minimum clear interval between divisions. When the index of an indicator extends along the entire length of a division, that portion of the index of the indicator that may be brought into coincidence with the division shall be of the same width throughout the length of the index that coincides with the division.

(s) *Dial indicator clearance.* The Clearance between the index of an indicator and the graduations shall in no case be more than 0.06 inch.

(t) *Parallax.* Parallax effects shall be reduced to the practicable minimum.

(u) *Dial weight ranges and unit weights.* The total value of weight ranges and of unit weights in effect or in place at any time shall automatically be accounted for on the reading face and on any recorded representations.

(v) *Minimum division.* Weight indicating and weight recording devices on scales used in the weighing of grain shall indicate and record in avoirdupois weight. The value of the minimum division on such devices shall be no greater than:

Capacity of scale	Minimum division
(1) HOPPER, VEHICLE, AND RAILROAD TRACK SCALES	
0-10,000 pounds inclusive	1 lb.
Greater than 10,000-20,000 pounds inclusive.	2 lbs.
Greater than 20,000-50,000 pounds inclusive.	5 lbs.
Greater than 50,000-100,000 pounds inclusive.	10 lbs.
Greater than 100,000-200,000 pounds inclusive.	20 lbs.
Greater than 200,000-500,000 pounds inclusive.	50 lbs.
(2) PORTABLE PLATFORM SCALE	
0-100 pounds inclusive	0.01 lb.
Greater than 100-200 pounds inclusive	0.02 lb.
Greater than 200-500 pounds inclusive	0.05 lb.

(Nonretroactice and enforceable as of January 1, 1980).

§ 803.4 Design of balance, tare, level, dampening, and arresting mechanisms.

(a) *Zero load—adjustment.* A scale shall be equipped with means by which the zero-load balance may be adjusted, and any loose material used

for this purpose shall be so enclosed that it cannot shift in position in such a way that the balance condition of the scale is altered. A balance ball shall not itself be rotatable unless it is automatic in operation or is enclosed in a cabinet.

(b) *Automatic zero setting devices.* An electronic mechanism designed to be manually operated to provide an automatic zero balance condition; i.e., "push button zero," shall be operable or accessible only by a tool outside of and entirely separate from this mechanism, or enclosed in a cabinet and operable only when the indication is stable within:

(1) Plus or minus 1 division for systems of 5000 pounds capacity or less; and

(2) Plus or minus 3 divisions for systems of more than 5000 pounds capacity. (Nonretroactive and enforceable as of January 1, 1977, and to become retroactive January 1, 1981.)

(c) *Automatic means to maintain a digital zero balance indication (AZM).* Scale designed with automatic means to maintain a digital zero balance indication shall be provided with means to meet the requirements of § 803.3(l), Zero Indication, and § 800.103(c), Capacity Indication. However, under normal operating conditions with the scale indicating zero, the maximum load, when placed immediately on the platform, which can be "rezeroed" without indicating a weight value shall be:

(1) For scales with 2500 scale divisions or less, +/− 1.0 scale division;

(2) For scales with more than 2500 scale divisions, +/− 3.0 scale divisions.

Automatic zero maintenance is *prohibited* in hopper scales used for weighing grain. On scales equipped with automatic zero maintenance, provisions shall be made for disabling the AZM feature when testing the device. (Nonretroactive as of 1976.)

(d) *Tare mechanism.* The tare mechanism shall operate only in a backward direction (that is, in the direction of underregistration) with respect to the zero-load balance condition of the scale.

(e) *Balance indicator.* On a balance indicator consisting of two indicating edges, lines, or points, the ends of the indicators shall be sharply defined and shall be separated by not more than 0.04 inch, measured horizontally, when the scale is in balance.

(f) *Dampening means.* An automatic-indicating scale, and balance indicator, shall be equipped with effective means for dampening the oscillations whenever such means are necessary to bring the indicating elements quickly to rest.

(g) *Motion detection.* Electronic indicating elements shall be equipped with effective means to permit the recording of weight values only when the indication is stable within:

(1) Plus or minus 1 division for systems of 5000 pounds capacity or less and

(2) plus or minus 3 divisions for systems of more than 5000 pounds capacity.

The values recorded shall be within applicable tolerances. (Nonretroactive and enforceable as of January 1, 1977, and to become retroactive as of January 1, 1981.)

§ 803.5 Design of weighing elements.

(a) *Antifriction elements.* At all points at which a live part of the mechanism may come into contact with another part in the course of normal usage, frictional effects shall be reduced to a minimum by means of suitable antifriction elements, opposing surfaces and points being properly shaped, finished, and hardened.

(b) *Adjustable components.* An adjustable component such as a nose iron, pendulum, spring, or potentiometer shall be held securely in adjustment. The position of a nose iron shall be held securely in adjustment. The positions of a nose iron on a scale of more than 2000 pounds capacity, as determined by the factory adjustment, shall be accurately, clearly, and permanently defined.

(c) *Multiple load-receiving elements.* A scale with a single indicating and recording element, or a combination indicating-recording element, that is coupled to two or more load-receiving elements with independent weighing systems shall be provided with automatic means to indicate and record clearly and definitely which load-receiving element is in use. (Nonretroactive as of 1969.)

§ 803.6 Design of weighbeams and poises.

(a) *Normal balance position.* The normal balance position of the weighbeam of a beam scale shall be horizontal.

(b) *Weighbeam travel.* The weighbeam of a beam scale shall have equal travel above and below the horizontal. The total travel of the weighbeam of a beam scale in a trig loop or between other limiting stops near the weighbeam tip shall be not less than the minimum travel shown in the table below. When such limiting stops are not provided, the total travel at the weighbeam tip shall be not less than 8 percent of the distance from the weighbeam fulcrum to the weighbeam tip.

MINIMUM TRAVEL OF WEIGHBEAM OF BEAM SCALE BETWEEN LIMITING STOPS

Distance from weighbeam fulcrum to limiting stops	Minimum travel between limiting stops
Inches	*Inch*
12 or less	0.4
13 to 20, incl	.5
21 to 40, incl	.7
Over 40	.9

(c) *Weighbeam subdivision.* A subdivided weighbeam bar shall be subdivided by means of graduations, notches, or a combination of both. Graduations on a particular bar shall be of uniform width and perpendicular to the top edge of the bar. Notches on a particular bar shall be uniform in shape and dimensions and perpendicular to the face of the bar. When a combination of graduations and notches is employed, the graduations shall be so positioned in relation to the notches as to indicate notch values clearly and accurately.

(d) *Readability.* A subdivided weighbeam bar shall be so subdivided and marked, and a weighbeam poise shall be so constructed, that the weight corresponding to any normal poise position can easily and accurately be read directly from the beam, whether or not provision is made for the optional recording of representations of weight.

(e) *Poise stop.* Except on a steelyard with no zero graduation, a shoulder or stop shall be provided on each weighbeam bar to prevent a poise from traveling and remaining back of the zero graduation.

(f) *Poises.* No part of a poise shall be readily detachable. A locking screw shall be perpendicular to the longitudinal axis of the weighbeam and shall not be removable. Except on a steelyard with no zero graduation, a poise shall not be readily removable from a weighbeam. The knife edge of a hanging poise shall be hard and sharp and so constructed as to allow the poise to swing freely on the bearing surfaces in the weighbeam notches.

(g) *Poise adjusting material.* The adjusting material in a poise shall be securely enclosed and firmly fixed in position, and if softer than brass it shall not be in contact with the weighbeam.

(h) *Poise pawl.* A poise, other than a hanging poise on a notched weighbeam bar shall have a pawl that will seat the poise in a definite and correct position in any notch, wherever in the notch the pawl is placed, and hold it there firmly and without appreciable movement. That dimension of the tip of the pawl that is transverse to the longitudinal axis of the weighbeam shall be at least equal to the corresponding dimension of the notches.

(i) *Reading edge or indicator.* The reading edge or indicator of a poise shall be sharply defined and shall be parallel to the graduations on the weighbeam.

§ 803.7 Marking requirements

(a) *Capacity.* The capacity shall be conspicuously marked as follows:

(1) On any scale equipped with unit weights or weight ranges;

(2) On any scale with which counterpoise or equal-arm weights are intended to be used;

(3) On any automatic-indicating or recording scale so constructed that the capacities of the several individual indicating and recording elements are not immediately apparent;

(4) On any scale with a capacity less than the sum of the reading elements.

(b) *Vehicle and railroad track scales.* A vehicle or railroad track scale shall be marked with the capacity of each section of the load-receiving element of the scale. Such marking shall be accurately and conspicuously presented on or adjacent to the indicating element of the scale. (Nonretroactive as of 1969.)

(c) *Weighing elements.* An indicating element not permanently attached to a weighing element shall be clearly and permanently marked for the purpose of identification with the name, initials, or trademark of the manufacturer; the manufacturer's designation that positively identifies the pattern or design; and the capacity. (Nonretroactive as of 1972.)

(d) *Operational controls.* All operational controls, indications, and features indicating switches, lights, displays, pushbuttons, and other means shall be clearly and definitely identified.

§ 803.8 Installation requirements

(a) *Foundation, supports, and clearance.* The foundation and supports of any scale installed in a fixed location shall be such as to provide strength, rigidity, and permanence of all components, and clearance shall be provided around all live parts to the extent that no contacts may result when the load-receiving element is empty and throughout the weighing range of the scale. On a motor truck scale, the clearance between the load-receiving elements and the coping at the bottom edge of the platform shall be greater than at the top edge of the platform. (Nonretroactive as of 1973.)

(b) *Access to pit.* Adequate provisions shall be made for ready access to the pit of a vehicle or railroad track scale for purposes of inspection and maintenance. Provisions shall be made to lock or seal all accesses to the pit.

(c) *approaches to vehicle scales.* On the approach end of a vehicle scale, there shall be a straight approach in the same plane as the platform. The approach shall be the same width as the platform and at least one-half the length of the platform. Not less than 10 feet of any approach adjacent to the platform shall be constructed of concrete, or similar durable material. However, grating of sufficient strength to withstand all loads may be installed in this portion; and further, where deemed necessary for drainage purposes, the remaining portion of the approach may slope slightly. (Nonretroactive as of 1976.)

(d) *Lifts.* On motor vehicle and railroad track scales equipped with means for raising the load-receiving element from the weighing element for vehicle unloading, suitable means shall be provided so that it is readily apparent to the weigher when the load-receiving element is in its designed weighing position. The printer shall not be operable until the load-receiving element is in its designed weighing position.

§ 803.9 User requirements.

(a) *Balance condition.* The zero-load adjustment of a scale shall be maintained so that, with no load on the load-receiving element and with all load-counterbalancing elements of the scale such as poises, drop weights, or counterbalancing weights set to zero, the scale shall indicate or record a zero balance condition.

(b) *Scale modifications.* Neither the length, nor the width, nor the height of the load-receiving element of a scale shall be increased beyond the manufacturer's design dimension; nor shall the capacity of a scale be increased beyond its design capacity by replacing or modifying the original primary indicating or recording element with one of a higher capacity; nor shall any other modification be made, except when the modification has been approved by competent engineering authority, preferably that of the engineering department of the manufacturer of the scale and by the Service.

(c) *Split or double draft static weighing.* A vehicle or a coupled vehicle combination or a railroad car shall be officially weighed statically on a vehicle or railroad track scale only as a single draft. That is, the total weight of such a vehicle or combination shall not be determined by adding together the results obtained by separately and not simultaneously weighing each end of such vehicle or individual elements of such coupled combination. However:

(1) The weight of a coupled combination may be determined by uncoupling the various elements (tractor, semi-trailer, trailer), statically weighing each unit separately as a single draft, and adding together the results; and

(2) The weight of a vehicle or coupled-vehicle combination may be determined by adding together the weights obtained while all individual elements are resting simultaneously on more than one scale platform.

(d) *Official testing and certification.* All official testing shall be performed in accordance with the appropriate chapters of the weighing handbook. Official certification shall be made only by scale specialists of the Service.

(e) *Railroad track scales—alignment of dead and weigh rails.* Dead rails should be provided for all scales where designed capacity does not correspond with the greatest combined load likely to run over scale rails. Weigh rails should be on the offset line and the dead rails straight unless a large portion of the cars is to be weighed. For motion weighing, the offset should be divided, unless the resistance is equalized by means of a spring switch.

(f) *Standing of equipment and keeping scales under load.* Equipment shall not be allowed to stand on the platform of a vehicle or railroad track scale, except when being weighed and, in the case of hopper scales, grain shall be stored or left in a hopper scale for extended lengths of time.

(g) *Altering poises and counterpoise weights.* After a poise or counterpoise weight has been sealed, no material shall be added to or removed without the approval of the Service and an official test conducted to recertify the scale.

(h) *Hopper scale venting.* All hopper scales used for official grain weighing shall be vented so that any internal or external pressure will not affect the accuracy or operation of the scale.

(i) *Suitability of equipment.* A scale used in grain weighing services shall be suitable with respect to the elements of design, including but not limited to its capacity; its computing capability; the character, number, size, and location of its indicating or recording elements; and the value of the smallest division that can be indicated or recorded.

(j) *Minimum test load.* The minimum amount of certified test weight required for testing shall be:

(1) Hopper scales—10% of capacity.

(2) Vehicle scales—20,000 lbs.

(3) Railroad track scales—50,000 lbs.

(4) Portable scales (up to 500 lbs.)—100% of capacity.

(k) *Assistance in testing.* If the design, construction, or location of any scale is such as to require a testing procedure involving special equipment, accessories, or an abnormal amount of labor, such equipment, accessories, and labor shall be supplied by the owner or operator of the device. Test weights calibrated to service specifications and in the amount required by paragraph (j) of this § 800.1009 shall

be supplied by the scale owner or operator.

(l) *Hopper scale working range.* A hopper scale shall normally be used in the working range of the scale, which is considered to be from half capacity to the capacity of the scale. Exceptions shall be made for certain special circumstances such as completing the loading of a particular hold of a vessel, load-trimming a vessel, or other similar circumstances. Under no circumstances shall the hopper capacity be less than one thousand (1,000) pounds.

(m) *Vehicle scale minimum load.* A vehicle scale shall not be used to weigh a gross load of less than one thousand (1,000) pounds.

§ 803.10 Tolerances and sensitivity requirements.

(a) *Application.* Tolerances described herein are applicable to all scales under jurisdiction of the Service and for all tests.

(b) *Tolerance values.* The applicable tolerances are established as follows:

Type of scale	Acceptance tolerance	Maintenance tolerance
(1) Hopper scale	.05 × the applied test load or the minimum tolerance value, whichever is greater.	.05 × the applied test load or the minimum tolerance value, whichever is greater.
(2) Motor vehicle scale	.05 × the applied test load or the minimum tolerance value, whichever is greater.	.1 × the applied test load or the minimum tolerance value, whichever is greater.
(3) Railroad track scale	.05 × the applied test load or the minimum tolerance value, whichever is greater.	.1 × the applied test load or the minimum tolerance value, whichever is greater.

Test load		Maintenance tolerances			Acceptance tolerances		
From	to but not including	*Expressed in grains*	*Expressed in ounces*	*Expressed in pounds*	*Expressed in grains*	*Expressed in ounces*	*Expressed in pounds*
50	75	2			1		
75	100	4	1	.062	2	1/2	.031
100	150	8	1-1/2	.094	4	3/4	.017
150	200	16	2	.125	8	1	.062
200	300						

(c) *Minimum tolerance.* The minimum tolerances that may be applied are established as follows:

(1) *Hopper and vehicle.* The minimum tolerance that may be applied shall not be smaller than one-half the minimum division.

(2) *Railroad track scales.* The minimum tolerance that may be applied shall not be smaller than twenty-five (25) pounds.

(3) *Portable platform scales.* The minimum tolerance that may be applied shall not be smaller than:

Capacity for nonautomatic-indicating scale or reading-face capacity for automatic indicating scales	Minimum tolerance value		
Pounds	Expressed in grains	Expressed in ounces	Expressed in pounds
51 to 100, incl		3/4	.047
101 to 150, incl		1 1/4	.078
151 to 250, incl		2	.125
251 to 500, incl		4	.250

(d) *Tests involving digital indications or representations.* To the tolerances that would otherwise be applied, there shall be added an amount equal to one-half the minimum value that can be indicated or recorded.

(e) *Acceptance tolerances.* Shall apply as follows:

(1) To any newly-installed scale about to be used for official grain weighing for the first time,

(2) To a scale that is being returned to official grain weighing following official rejection for failure to conform to performance requirements, and

(3) To equipment that is being officially tested for the first time after reconditioning or overhaul.

(f) *Maintenance tolerance.* Shall apply to equipment in actual use, except as provided for under acceptance tolerances.

(g) *Excess and deficiency.* Tolerances "in excess" and tolerances "in deficiency" shall apply to errors in excess and to errors in deficiency, respectively.

(h) *To scales with multiple elements.* Tolerances shall be applied independently to each indicating and recording element of a scale. However, the following requirements pertaining to analog and digital elements shall also apply:

(1) All analog indications within the same element shall not differ from one another, and all digital elements shall not differ from one another;

(2) All analog indications and representations shall not differ from digital indications and recorded representations by an amount greater than the value of the minimum division on the device, except the elements shall not

differ under a no-load zero balance condition; and

(3) All components of the same element used in combination (such as a dial and unit weights) shall not differ by an amount greater than the applicable tolerance at any given test load.

(i) *To shift tests.* Basic tolerances shall be applied.

(j) *To increasing load tests.* Basic tolerances shall be applied.

(k) *To decreasing load tests on automatic indicating scales.* One and one-half (1.5) times basic tolerance shall be applied.

(l) *To ratio tests.* Three fourths (0.75) of basic tolerances shall be applied.

(m) *To sectional tests on vehicle and railroad track scales.* The maximum deviation between indicated values on test loads applied to individual sections shall not be greater than the absolute value of the maintenance tolerance applicable to that test load.

(n) *To railroad track scales weighing uncoupled-in-motion cars.* The basic maintenance and acceptance tolerance shall be the same as the basic tolerances for railroad track scales stated in paragraph (b)(3) of this § 803.10.

(o) *Sensitivity requirement (SR).* (1) *Hopper scales not equipped with balance indicator.* The SR shall be twice the value of the minimum division of the weighbeam or 0.2 percent of the capacity of the scale, whichever is less.

(2) *Hopper scales equipped with balance indicator.* The SR shall be the value of the minimum division on the weighbeam.

(3) *Vehicle scales not equipped with balance indicator.* The SR shall be twice the value of the minimum divisions on the weighbeam or 0.2 percent of the capacity of the scale, whichever is less.

(4) *Vehicle scales equipped with balance indicator.* The SR shall be the value of the minimum division on the weighbeam.

(5) *Railroad track scales.* The SR shall be three times the value of the minimum division on the weighbeam or 100 lbs., whichever is less.

(6) *Portable platform scale not equipped with balance indicator.* The SR shall be twice the value of the minimum division or 0.2 percent of the capacity of the scale, whichever is less.

(7) *Portable platform scales equipped with balance indicator.* The SR shall be the value of the minimum division on the weighbeam.

§ 803.11 Weight-indicating and weight-recording devices and representations.

(a) *General requirements.* Each grain scale, except portable platform scales, shall be equipped with a weight-recording device.

(b) *Readability.* Primary and remote indications of the weight of grain and printed representations of the weight of grain shall be clear, definite, accurate, and easily read under normal operating conditions.

(c) *Tape printers.* Tape printers on automatic-indicating scales shall be designed to produce a minimum of an original and one copy of the printed record.

(d) *Ticket printers.* Ticket printers on automatic indicating scales shall be designed to produce an original and five copies of the printed record. Ticket printers on non-automatic indicating scales shall be designed to produce an original and one copy of the printed record.

(e) *Multiple weight-indicating and printing devices.* If a scale has more than one weight-indicating and one weight-recording device, the values indicated by each of the devices and the weights printed by each of the devices shall be in agreement.

(f) *Recorded weight identification.* Gross weight, tare weight, net weight, sub-total, and total printed representations shall either be identified by a symbol clearly and accurately identifying the type weight printed; example, G-Gross, T-Tare, N-Net, ST-Sub-total, TO-Total, or shall be identified as such on the ticket or tape on which they are printed.

§ 803.12 Railroad track scales—additional requirements.

(a) *Rated sectional capacity.* The rated sectional capacity of a full load-cell scale shall be one of the following and shall employ load cells in capacities as shown:

Sectional Capacity (Tons) Track Scale	Each Load Cell Rated Capacity (Pounds)
85	100,000
180	200,000

The rated sectional capacity shall in no case exceed the actual sectional capacity.

(b) *Nose iron guides.* The guides for all nose-irons shall be such that when one is moved for the purpose of adjustment, the pivot will be held parallel to its original position. For cast iron levers, the guide and ways shall be machined.

(c) *Leveling lugs.* In scales of the straight lever type, each lever shall be provided with leveling lugs for longitudinal alignment. In scales of the torsion lever type, leveling lugs shall be provided on the pipe or torsion member for transverse alignment and on the extension arm for longitudinal alignment. Each pair of lugs shall be spaced 11 inches apart. The leveling surfaces of each pair of lugs shall be finished to a common plane, which shall be parallel to the plane through the knife edges of the end pivots.

(d) *Truss rods.* Truss rods shall not be used in parts of the lever system except to stiffen levers laterally or to prevent whipping and vibration due to impact. Truss rods designed as part of a lever structure to support vertically applied loads will not be permitted.

(e) *Marking of levers.* Figures denoting the ratio of each lever shall be case or otherwise permanently marked on the lever.

(f) *Pivots and bearings—material.* The material to be used for pivots and bearings shall be alloy steel (SAE 52100), or a steel which will give equivalent performance, hardened to Rockwell C scale not less than 58 or more than 62.

(g) *Design and maintenance.* Pivots shall be so formed that the included angle of the sides forming the knife edge will not exceed 90 degrees and that the offset of the knife edge from the center line of the pivot will not exceed 10 percent of the width of the pivot.

(h) *Mounting.* (1) *Fastening.* Pivots shall be firmly fastened in position without swaging or caulking.

(2) *Machined-in pivots, when required.* For scales of greater sectional capacity than 50 tons, main lever pivots shall be machine finished and fitted into machined ways.

(3) *Continuous contact required.* Pivots shall be so mounted that continuous contact of the knife edges with their respective bearings for the full length of the parts designed to be in contact will be obtained; in loop bearings the knife edges shall project slightly beyond the bearings in the loops.

(i) *Position.* In any lever the pivots shall be so mounted that:

(1) Each knife edge will be maintained in a horizontal plane under any load within the capacity of the scale;

(2) A plane bisecting the angle of a knife edge will be perpendicular to the plane through the knife edges of the end pivots;

(3) The actual distance between the end knife edges of any lever will not differ from the nominal distance by more than $\frac{1}{64}$ inch per foot; and

(4) The knife edges in any lever will be parallel.

(j) *Support for projecting pivots.* The reinforcement on the levers to support projecting pivots shall be tapered off to prevent accumulaton of dirt next to the pivots and to provide proper clearance.

(k) *Fulcrum distances.* The minimum distance between the fulcrum pivot knife edge and the load pivot knife edge in main levers of scales of 75 tons sectional capacity or less shall be 6.5 inches. In scales of greater than

75 tons sectional capacity, the minimum distance shall be 8 inches.

(l) *Design of bearings.* Bearing steels and the parts supporting or containing them shall be so applied to the mechanism that permissible movement of the platform will not displace the line of contact between any bearing and the opposing pivot.

(m) *Nose iron design.* Nose irons shall be so constructed that:

(1) They will be positioned by means of adjusting screws of standard size and thread;

(2) They will be retained in position by means of screws or bolts of standard size and thread;

(3) The surfaces of nose irons intended to be in slidable contact with the levers will be machined true, so as to secure fit in or on the levers; and

(4) When adjustments are made, the knife edge will be held parallel to its normal position.

(n) *Screws and bolts.* Adjusting and retaining screws and bolts shall be made of a corrosion-resistant material.

(o) *Retaining device.* A device for retaining each nose iron in position shall be provided and shall be so designed and constructed that it will:

(1) Be independent of the means provided for adjustment;

(2) Not cause indentations in the lever;

(3) Not cause tension in the remaining bolts when loads are applied to the scale; and

(4) Cause the nose iron to remain in position when the retaining device is released.

(p) *Lever fulcrum stands—qualities of materials.* Castings of structrual steel for lever stands shall be clean, smooth, and uniform; and castings shall be free of blisters, blow holes, shrinkage holes, and cracks. All welding shall conform to current American Welding Society specifications.

(q) *Loops and connections—material.* The requirements for material and hardness of bearing surfaces in loop connections shall be the same as those herein prescribed for pivots and bearings.

(r) *Identification of parts.* Each weighbeam shall be given a serial number which shall be stamped on the weighbeam. The pivots, poises, and fractional bar shall have stamped upon them identification marks to show to which weighbeam each belongs; and the pivots shall be so marked as to indicate their proper positions in the weighbeam.

(s) *Factory adjustment of notches.* Each weighbeam notch be adjusted to within 0.002 inches of the nominal distance from the zero notch.

(t) *Trig loop.* The play of the weighbeam in the trig loop shall be not more than 2 percent of the distance from the trig to the fulcrum pivot, nor less than 0.9 inches. The weighbeam shall be fitted with an indicator to be used in conjunction with a graduated target or other device on the trig loop to indicate a central position in the trig loop when the weighbeam is horizontal.

(u) *Weighbeam support.* The weighbeam fulcrum stand and trig loop stand shall be supported on a metal shelf mounted on metal pillars or material equivalent in strength and durability. The shelf shall be sufficiently rigid that, within the capacity of the scale, deflection cannot occur to such an extent as will affect the weighing performance.

(v) *Weighbridge girders.* Weighbridge girders shall be so designed that the joints over the centers of bearing will admit vertical flexure without deranging the sections. On short axle weighbridges, no tipping of the weighbridges will be allowed.

(w) *Weighbridge bearings.* The surfaces of weighbridge bearings intended to make contact with the bridge girders shall be finished so that, when in position, all the bearing surfaces will be within 1/32 inch of the same horizontal plane and parallel to it. To secure proper alignment of parts, the diameters of the bolt holes in the weighbridge bearings and in the girders shall exceed the diameter of the bolts fastening the bearings to the girders by ½ inch.

(x) *Steel specifications.* Structural steel work shall conform to the American Railway Engineering Association (A.R.E.A.) Specifications for Steel Railway Bridges, Part 1, Chapter 15.

(y) *Concrete bearing surfaces.* Bearing stresses on concrete shall not exceed 300 pounds per square inch (psi) under loadcell bearing plates and lever stands and 400 psi at all other points.

(z) *Stresses.* To allow for impact and normal pit conditions, all steel design stress in scale weighbridges shall be limited to 10,000 psi, and maximum deflection in main weighbridge beams or girders shall not exceed one twelve-hundredth (1/1200) of the span between sections. In designing cast iron members, the maximum allowable unit stress of any character shall be determined by the greatest thickness, exclusive of fillets, of the portion of the section carrying the stress being considered. In the main portion of a beam, the thickness of the webb or flange shall be used, whichever is the greater. The thickness of the flange shall be considered either as the average depth of the outstanding portion or the breadth of flange outside to outside, whichever is less. A.R.E.A. weighbridge specifications-Cooper E-80 rating live load, minimum.

(aa) *Weighrails—length and weight.* The weight and section of weighrails shall be as large as is consistent with surrounding yard track conditions, but no less than 112 pounds per yard. Rails shall be one piece full length of scale.

(bb) *Clearance along weighrails.* The clearance between weighrails or their pedestals and the rigid deck shall be less than one and one-half (1½) inches unless other adequate provision for clearance is made, and the openings shall be protected from weather and dirt.

(cc) *Approach rails.* Positive means shall be provided to prevent creeping of approach rails and to maintain a clearance which shall be not less than one-eighth (⅛) inch or more than five-eighths (⅝) inches between the approach rails and the weighrails unless some special means is used to reduce impact when wheel loads pass from the approach rails to weighrails.

(dd) *Mitre joints.* For motion weighing scales, mitred joints shall be provided.

(ee) *Dead rails.* All scales except those located where they cannot be subjected to locomotive or other loads in excess of the sectional capacity, and excepting also scales of greater than 100 tons sectional capacity, shall be equipped with dead rails extending in one continuous piece across the scale and at the same elevation as the weighrails.

(ff) *Clearance.* The clearance between the bottom of any fixed beams, or deck supports, and the girder forming the weighbridge shall not be less than two (2) inches.

(gg) *Location.* Scales shall be so located that an adequate foundation and at least seventy-five (75) feet of tangent track at each approach to the weighrails can be provided.

(hh) *Approach walls, static scales.* Approach walls or piers of concrete shall be built to extend at least 25 feet from the pit face of the end walls and back under the track to preserve line and surface of tracks. They may be built of a solid mass of concrete or may consist of parallel walls or piers; however, the latter construction shall have a single footing supporting both walls. Where necessary to obtain safe bearing capacity, the approach walls shall extend to the same depth as the pit walls.

(ii) *Footings or piers for load cells.* Concrete footings or piers supporting load-cell base plates shall not be less than 18 inches thick. Their tops shall be above the floor a sufficient distance to prevent the accumulation of water around or under the base plates.

(jj) *Footings or piers for lever stands.* Concrete footings or piers supporting the lever stands shall be not less than 18 inches thick. Their tops shall be above the floor a sufficient distance to prevent the accumulation

of water under the bases of stands, and shall be finished to exact level and elevation to receive the lever stands directly without the use of shims or grouting where possible. If the scale is of a type having main levers or parts of the bearing assemblies that hang below the bases of the main lever stands, the piers shall be provided with recesses of a size to give clearance of not less than 1.5 inches and so formed as to prevent accumulation of dirt.

(kk) *Anchor bolts.* Anchor bolts embedded in concrete a minimum of 15 inches shall be provided in foundations for lever stands or load-cell base plates.

(ll) *Bearing pressures under foundations.* The bearing areas of the foundation footings shall be such that the pressure under the footings will not exceed:

For fine sand and clay.....	4,000 lb. per sq. ft.
For coarse sand and gravel or hard clay.	6,000 lb. per sq. ft.
For boulders or solid rock.	20,000 lb. per sq. ft.

If the soil does not have a bearing capacity of at least 4,000 pounds per sq. ft. and its bearing capacity cannot be increased by drainage, by stabilization, or by other means, pile foundations shall be provided. Careful soil exploration, including borings, is always desirable.

§ 803.13 Test standards and counterpoise weights.

(a) *Weight accuracy.* counterpoise weights and field test standards (except in railroad track scale tests) shall be verified to within tolerances established by the National Bureau of Standards for Class "F" weights.

(b) *Railroad scale standards accuracy.* Test cars shall be calibrated within "master" track scale limits whenever possible. In any event, the test car error shall not exceed 16 pounds plus or minus.

(c) *Frequency of test weight certification.* (1) Counterpoise weights test weights up to and including 50 pounds, and baskets used to hold test weights which are themselves calibrated as standards shall be reverified annually. Documentation indicating date or reverification by a qualified laboratory shall be supplied to the Service on request.

(2) Large one-piece standards (block test weights) which are stored in the facility in which they are used and meet the following criteria shall be reverified every 3 years.

(i) Standards shall be kept covered and stored in a reasonably clean and dry environment when not in use.

(ii) All movement of standards, such as to and from storage and movement between scales shall be supervised by employees of the Service.

(iii) Standards shall show no evidence of abuse or damage and the sealing cavity shall be clearly stamped by a "qualified laboratory" with the year of reverification.

(iv) documentation clearly indicating the date of last reverification shall be supplied to the Service. The 3-year interval will begin on the date indicated.

(3) Large one-piece standards used for testing official scales by approved testing agencies shall be reverified at least biennially. Documentation indicating reverification by a qualified laboratory shall be supplied to the Service on request.

(4) Standard test weights cars; i.e., railroad track scale test cars used in official testing of railroad track scales under the jurisdiction of the Service, shall be reverified at least annually. Documentation indicating date and location of least reverification shall be supplied to the Service on request.

(d) *Test standard size.* The stenciled weight of a test car shall be in 1000-pound intervals. Test weight loads, for vehicle and hopper scales used, shall be sealed to a 50-pound interval.

(e) *Care of field standards.* Test standards shall be kept clean and protected in such a manner that they will not become chipped or damaged. They must be repainted as required by the Service. Plugs and seals for adjusting cavities shall always remain intact.

(f) *chains, hangers, and baskets.* Any chains or hangers used for suspending test weights on a large capacity scale may be balanced in part of the zero load and treated as a segment of the scale. Hangers for groups of test weights shall be treated as known standard weights and consequently maintained in a similar manner. "Open" baskets shall be sealed to a 50-pound multiple interval which shall be calibrated and treated as a normal standard. Closed baskets shall be sealed as an integral part of a standard summation. The closed basket shall be designed in such a manner to incorporate a fitted cover plate which shall be locked during calibration and keys placed in the local field office for security.

(g) *Qualified laboratories.* (1) All State laboratories currently approved by a NBS ongoing certification program having auditing capabilities are automatically approved by the Service.

(2) Any county or city weights and measures jurisdiction approved by NBS *or by their respective NBS-Certified State Laboratory as* being equipped with appropriate traceable standards and trained staff to provide valid calibration is approved by the Service. The State approval may be documented by a certificate or letter. The jurisdiction must be equipped to provide suitable certification documentation.

(3) Any commercial industrial laboratory primarily involved in the business of sealing and calibrating test weights ("standards") will be "qualified" provided:

(i) They request authority to work on elevator-owned weights through the State jurisdiction. The State in turn must advise the Service of their decision;

(ii) They have NBS "traceable" standards (through the State) and trained staff to perform calibrations in a manner prescribed by NBS and/or the State;

(iii) They must be equipped to provide suitable certification documentation;

(iv) They must permit the Service's Scale Testing Branch to make on-the-site visits to "laboratory" testing space. Final approval of the commercial industrial laboratory will be contingent on the Service's judgment; and

(v) Once having obtained approval, the commercial industrial laboratory must maintain its site in a manner prescribed by the State and/or the Service.

Done at Washington, D.C.: February 22, 1979.

L. E. BARTELT,
Administrator.

[FR Doc. 79-6291 Filed 3-1-79; 8:45 am]

FEDERAL REGISTER

FRIDAY, MARCH 2, 1979

PART IV

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

OFFICE OF PERSONNEL MANAGEMENT

DEPARTMENT OF JUSTICE

DEPARTMENT OF LABOR

DEPARTMENT OF THE TREASURY

■

ADOPTION OF QUESTIONS AND ANSWERS TO CLARIFY AND PROVIDE A COMMON INTERPRETATION OF THE UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

[6570-06-M]

Title 29—Labor

CHAPTER XIV—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PART 1607—UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1978)

Title 5—Administrative Personnel

OFFICE OF PERSONNEL MANAGEMENT

PART 300—EMPLOYMENT (GENERAL)

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

PART 50—STATEMENTS OF POLICY

Title 31—Money and Finance: Treasury

CHAPTER I—MONETARY OFFICES: DEPARTMENT OF THE TREASURY

PART 51—FISCAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Title 41—Public Contracts and Property Management

CHAPTER 60—OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, DEPARTMENT OF LABOR

PART 60-3—UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1978)

Adoption of Questions and Answers To Clarify and Provide a Common Interpretation of the Uniform Guidelines on Employee Selection Procedures

AGENCIES: Equal Employment Opportunity Commission, Office of Personnel Management, Department of Justice, Department of Labor and Department of Treasury.

ACTION: Adoption of questions and answers designed to clarify and provide a common interpretation of the Uniform Guidelines on Employee Selection Procedures.

SUMMARY: The Uniform Guidelines on Employee Selection Procedures were issued by the five Federal agencies having primary responsibility for the enforcement of Federal equal employment opportunity laws, to establish a uniform Federal government position. See 43 FR 38290, et seq. (Aug. 25, 1978) and 43 FR 40223 (Sept. 11, 1978). They became effective on September 25, 1978, The issuing agencies recognize the need for a common interpretation of the Uniform Guidelines, as well as the desirability of providing additional guidance to employers and other users, psychologists, and investigators, compliance officers and other Federal enforcement personnel. These Questions and Answers are intended to address that need and to provide such guidance.

EFFECTIVE DATE: March 2, 1979.

FOR FURTHER INFORMATION CONTACT:

A. Diane Graham, Assistant Director, Affirmative Employment Programs, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, 202/632-4420.

James Hellings, Special Assistant to the Assistant Director, Intergovernmental Personnel Programs, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, 202/632-6248.

Kenneth A. Millard, Chief, State and Local Section, Personnel Research and Development Center, Office of Personnel Management, 1900 E St., NW., Washington, D.C. 20415, 202-632-6238.

Peter C. Robertson, Director, Office of Policy Implementation, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20506, 202/634-7060.

David L. Rose, Chief, Employment Section, Civil Rights Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530, 202/633-3831.

Donald J. Schwartz, Psychologist, Office of Federal Contract Compliance Programs, Room C-3324, Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, 202/523-9426.

Herman Schwartz, Chief Counsel, Office of Revenue Sharing, Department of the Treasury, 2401 E Street, NW., Washington, D.C. 20220, 202/634-5182.

James O. Taylor, Jr., Research Psychologist, Office of Systemic Programs, Equal Employment Opportunity Commission, 2401 E St., NW., Washington, D.C. 20506, 202/254-3036.

INTRODUCTION

The problems addressed by the Uniform Guidelines on Employee Selection Procedures (43 FR 38290 et seq., August 25, 1978) are numerous and important, and some of them are complex. The history of the development of those Guidelines is set forth in the introduction to them (43 FR 38290-95). The experience of the agencies has been that a series of answers to commonly asked questions is helpful in providing guidance not only to employers and other users, but also to psychologists and others who are called upon to conduct validity studies, and to investigators, compliance officers and other Federal personnel who have enforcement responsibilities.

The Federal agencies which issued the Uniform Guidelines—the Departments of Justice and Labor, the Equal Employment Opportunity Commission, the Civil Service Commission (which has been succeeded in relevant part by the Office of Personnel Management), and the Office of Revenue Sharing, Treasury Department—recognize that the goal of a uniform position on these issues can best be achieved through a common interpretation of the same guidelines. The following Questions and Answers are part of such a common interpretation. The material included is intended to interpret and clarify, but not to modify, the provisions of the Uniform Guidelines. The questions selected are commonly asked questions in the field and those suggested by the Uniform Guidelines themselves and by the extensive comments received on the various sets of proposed guidelines prior to their adoption. Terms are used in the questions and answers as they are defined in the Uniform Guidelines.

The agencies recognize that additional questions may be appropriate for similar treatment at a later date, and contemplate working together to provide additional guidance in interpreting the Uniform Guidelines. Users and other interested persons are invited to submit additional questions.

ELEANOR HOLMES NORTON,
Chair, Equal Employment Opportunity Commission.

ALAN K. CAMPBELL,
Director, Office of Personnel Management.

DREW S. DAYS III,
Assistant Attorney General, Civil Rights Division, Department of Justice.

WELDEN ROUGEAU,
Director, Office of Federal Contract Compliance, Department of Labor.

KENT A. PETERSON,
Acting Deputy Director, Office of Revenue Sharing.

I. PURPOSE AND SCOPE

1. Q. What is the purpose of the Guidelines?

A. The guidelines are designed to aid in the achievement of our nation's

goal of equal employment opportunity without discrimination on the grounds of race, color, sex, religion or national origin. The Federal agencies have adopted the Guidelines to provide a uniform set of principles governing use of employee selection procedures which is consistent with applicable legal standards and validation standards generally accepted by the psychological profession and which the Government will apply in the discharge of its responsibilities.

2. Q. What is the basic principle of the Guidelines?

A. A selection process which has an adverse impact on the employment opportunities of members of a race, color, religion, sex, or national origin group (referred to as "race, sex, and ethnic group," as defined in Section 16P) and thus disproportionately screens them out is unlawfully discriminatory unless the process or its component procedures have been validated in accord with the Guidelines, or the user otherwise justifies them in accord with Federal law. See Sections 3 and 6.[1] This principle was adopted by the Supreme Court unanimously in *Griggs* v. *Duke Power Co.*, 401 U.S. 424, and was ratified and endorsed by the Congress when it passed the Equal Employment Opportunity Act of 1972, which amended Title VII of the Civil Rights Act of 1964.

3. Q. Who is covered by the Guidelines?

A. The Guidelines apply to private and public employers, labor organizations, employment agencies, apprenticeship committees, licensing and certification boards (see Question 7), and contractors or subcontractors, who are covered by one or more of the following provisions of Federal equal employment opportunity law: Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (hereinafter Title VII); Executive Order 11246, as amended by Executive Orders 11375 and 12086 (hereinafter Executive Order 11246); the State and Local Fiscal Assistance Act of 1972, as amended; Omnibus Crime Control and Safe Streets Act of 1968, as amended; and the Intergovernmental Personnel Act of 1970, as amended. Thus, under Title VII, the Guidelines apply to the Federal Government with regard to Federal employment. Through Title VII they apply to most private employers who have 15 or more employees for 20 weeks or more a calendar year, and to most employment agencies, labor orgainzations and apprenticeship committees. They apply to state and local governments which employ 15 or more employees, or which receive revenue sharing funds, or which receive funds from the Law Enforcement Assistance Administration to impose and strengthen law enforcement and criminal justice, or which receive grants or other federal assistance under a program which requires maintenance of personnel standards on a merit basis. They apply through Executive Order 11246 to contractors and subcontractors of the Federal Government and to contractors and subcontractors under federally-assisted construction contracts.

4. Q. Are college placement officers and similar organizations considered to be users subject to the Guidelines?

A. Placement offices may or may not be subject to the Guidelines depending on what services they offer. If a placement office uses a selection procedure as a basis for any employment decision, it is covered under the definition of "user". Section 16. For example, if a placement office selects some students for referral to an employer but rejects others, it is covered. However, if the placement office refers all interested students to an employer, it is not covered, even though it may offer office space and provision for informing the students of job openings. The Guidelines are intended to cover all users of employee selection procedures, including employment agencies, who are subject to Federal equal employment opportunity law.

5. Q. Do the Guidelines apply only to written tests?

A. No. They apply to all selection procedures used to make employment decisions, including interviews, review of experience or education from application forms, work samples, physical requirements, and evaluations of performance. Sections 2B and 16Q, and see Question 6.

6. Q. What practices are covered by the Guidelines?

A. The Guidelines apply to employee selection procedures which are used in making employment decisions, such as hiring, retention, promotion, transfer, demotion, dismissal or referral. Section 2B. Employee selection procedures include job requirements (physical, education, experience), and evaluation of applicants or candidates on the basis of application forms, interviews, performance tests, paper and pencil tests, performance in training programs or probationary periods, and any other procedures used to make an employment decision whether administered by the employer or by an employment agency. See Section 2B.

7. Q. Do the Guidelines apply to the licensing and certification functions of state and local governments?

A. The Guidelines apply to such functions to the extent that they are covered by Federal law. Section 2B. The courts are divided on the issue of such coverage. The Government has taken the position that at least some kinds of licensing and certification which deny persons access to employment opportunity may be enjoined in an action brought pursuant to Section 707 of the Civil Rights Act of 1964, as amended.

8. Q. What is the relationship between Federal equal employment opportunity law, embodied in these Guidelines, and State and Local government merit system laws or regulations requiring rank ordering of candidates and selection from a limited number of the top candidates?

A. The Guidelines permit ranking where the evidence of validity is sufficient to support that method of use. State or local laws which compel rank ordering generally do so on the assumption that the selection procedure is valid. Thus, if there is adverse impact and the validity evidence does not adequately support that method of use, proper interpretation of such a state law would require validation prior to ranking. Accordingly, there is no necessary or inherent conflict between Federal law and State or local laws of the kind described.

Under the Supremacy Clause of the Constitution (Art. VI, Cl. 2), however, Federal law or valid regulation overrides any contrary provision of state or local law. Thus, if there is any conflict, Federal equal opportunity law prevails. For example, in *Rosenfeld* v. *So. Pacific Co.*, 444 F. 2d 1219 (9th Cir., 1971), the court held invalid state protective laws which prohibited the employment of women in jobs entailing long hours or heavy labor, because the state laws were in conflict with Title VII. Where a State or local official believes that there is a possible conflict, the official may wish to consult with the State Attorney General, County or City attorney, or other legal official to determine how to comply with the law.

II. Adverse Impact, the Bottom Line and Affirmative Action

9. Q. Do the Guidelines require that only validated selection procedures be used?

A. No. Although validation of selection procedures is desirable in personnel management, the Uniform Guidelines require users to produce evidence of validity only when the selection procedure adversely affects the opportunities of a race, sex, or ethnic group

[1] Section references throughout these questions and answers are to the sections of the *Uniform Guidelines on Employee Selection Procedures* (herein referred to as "Guidelines") that were published by the Equal Employment Opportunity Commission, the Civil Service Commission, the Department of Labor, and the Department of Justice on Aug. 25, 1978, 43 FR 38290. The Uniform Guidelines were adopted by the Office of Revenue Sharing of the Department of Treasury on September 11, 1978. 43 FR 40223.

for hire, transfer, promotion, retention or other employment decision. If there is no adverse impact, there is no validation requirement under the Guidelines. Sections 1B and 3A. See also, Section 6A.

10. Q. What is adverse impact?

A. Under the Guidelines adverse impact is a substantially different rate of selection in hiring, promotion or other employment decision which works to the disadvantage of members of a race, sex or ethnic group. Sections 4D and 16B. See Questions 11 and 12.

11. Q. What is a substantially different rate of selection?

A. The agencies have adopted a rule of thumb under which they will generally consider a selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5ths) or eighty percent (80%) of the selection rate for the group with the highest selection rate as a substantially different rate of selection. See Section 4D. This "4/5ths" or "80%" rule of thumb is not intended as a legal definition, but is a practical means of keeping the attention of the enforcement agencies on serious discrepancies in rates of hiring, promotion and other selection decisions.

For example, if the hiring rate for whites other than Hispanics is 60%, for American Indians 45%, for Hispanics 48%, and for Blacks 51%, and each of these groups constitutes more than 2% of the labor force in the relevant labor area (see Question 16), a comparison should be made of the selection rate for each group with that of the highest group (whites). These comparisons show the following impact ratios: American Indians 45/60 or 75%; Hispanics 48/60 or 80%; and Blacks 51/60 or 85%. Applying the 4/5ths or 80% rule of thumb, on the basis of the above information alone, adverse impact is indicated for American Indians but not for Hispanics or Blacks.

12. Q. How is adverse impact determined?

A. Adverse impact is determined by a four step process.

(1) calculate the rate of selection for each group (divide the number of persons selected from a group by the number of applicants from that group).

(2) observe which group has the highest selection rate.

(3) calculate the impact ratios, by comparing the selection rate for each group with that of the highest group (divide the selection rate for a group by the selection rate for the highest group).

(4) observe whether the selection rate for any group is substantially less (i.e., usually less than 4/5ths or 80%) than the selection rate for the highest group. If it is, adverse impact is indicated in most circumstances. See Section 4D.

For example:

Applicants	Hires	Selection rate Percent hired
80 White	48	48/80 or 60%
40 Black	12	12/40 or 30%

A comparison of the black selection rate (30%) with the white selection rate (60%) shows that the black rate is 30/60, or one-half (or 50%) of the white rate. Since the one-half (50%) is less than 4/5ths (80%) adverse impact is usually indicated.

The determination of adverse impact is not purely arithmetic however; and other factors may be relevant. See, Section 4D.

13. Q. Is adverse impact determined on the basis of the overall selection process or for the components in that process?

A. Adverse impact is determined first for the overall selection process for each job. If the overall selection process has an adverse impact, the adverse impact of the individual selection procedure should be analyzed. For any selection procedures in the process having an adverse impact which the user continues to use in the same manner, the user is expected to have evidence of validity satisfying the Guidelines. Sections 4C and 5D. If there is no adverse impact for the overall selection process, in most circumstances there is no obligation under the Guidelines to investigate adverse impact for the components, or to validate the selection procedures used for that job. Section 4C. But see Question 25.

14. Q. The Guidelines designate the "total selection process" as the initial basis for determining the impact of selection procedures. What is meant by the "total selection process"?

A. The "total selection process" refers to the combined effect of all selection procedures leading to the final employment decision such as hiring or promoting. For example, appraisal of candidates for administrative assistant positions in an organization might include initial screening based upon an application blank and interview, a written test, a medical examination, a background check, and a supervisor's interview. These in combination are the total selection process. Additionally, where there is more than one route to the particular kind of employment decision, the total selection process encompasses the combined results of all routes. For example, an employer may select some applicants for a particular kind of job through appropriate written and performance tests. Others may be selected through an internal upward mobility program, on the basis of successful performance in a directly related trainee type of position. In such a case, the impact of the total selection process would be the combined effect of both avenues of entry.

15. Q. What is meant by the terms "applicant" and "candidate" as they are used in the Uniform Guidelines?

A. The precise definition of the term "applicant" depends upon the user's recruitment and selection procedures. The concept of an applicant is that of a person who has indicated an interest in being considered for hiring, promotion, or other employment opportunities. This interest might be expressed by completing an application form, or might be expressed orally, depending upon the employer's practice.

The term "candidate" has been included to cover those situations where the initial step by the user involves consideration of current employees for promotion, or training, or other employment opportunities, without inviting applications. The procedure by which persons are identified as candidates is itself a selection procedure under the Guidelines.

A person who voluntarily withdraws formally or informally at any stage of the selection process is no longer an applicant or candidate for purposes of computing adverse impact. Employment standards imposed by the user which discourage disproportionately applicants of a race, sex or ethnic group may, however, require justification. Records should be kept for persons who were applicants or candidates at any stage of the process.

16. Q. Should adverse impact determinations be made for all groups regardless of their size?

A. No. Section 15A(2) calls for annual adverse impact determinations to be made for each group which constitutes either 2% or more of the total labor force in the relevant labor area, or 2% or more of the applicable workforce. Thus, impact determinations should be made for any employment decision for each group which constitutes 2% or more of the labor force in the relevant labor area. For hiring, such determination should also be made for groups which constitute more than 2% of the applicants; and for promotions, determinations should also be made for those groups which constitute at least 2% of the user's workforce. There are record keeping obligations for all groups, even those which are less than 2%. See Question 86.

17. Q. In determining adverse impact, do you compare the selection rates for males and females, and blacks and whites, or do you compare selection rates for white males, white females, black males and black females?

A. The selection rates for males and females are compared, and the selection rates for the race and ethnic groups are compared with the selection rate of the race or ethnic group with the highest selection rate. Neutral and objective selection procedures free of adverse impact against any race, sex or ethnic group are unlikely to have an impact against a subgroup. Thus there is no obligation to make comparisons for subgroups (e.g., white male, white female, black male, black female). However, there are obligations to keep records (see Question 87), and any apparent exclusion of a subgroup may suggest the presence of discrimination.

18. Q. Is it usually necessary to calculate the statistical significance of differences in selection rates when investigating the existence of adverse impact?

A. No. Adverse impact is normally indicated when one selection rate is less than 80% of the other. The federal enforcement agencies normally will use only the 80% (⅘ths) rule of thumb, except where large numbers of selections are made. See Questions 20 and 22.

19. Q. Does the ⅘ths rule of thumb mean that the Guidelines will tolerate up to 20% discrimination?

A. No. The ⅘ths rule of thumb speaks only to the question of adverse impact, and is not intended to resolve the ultimate question of unlawful discrimination. Regardless of the amount of difference in selection rates, unlawful discrimination may be present, and may be demonstrated through appropriate evidence. The ⅘ths rule merely establishes a numerical basis for drawing an initial inference and for requiring additional information.

With respect to adverse impact, the Guidelines expressly state (section 4D) that differences in selection rates of less than 20% may still amount to adverse impact where the differences are significant in both statistical and practical terms. See Question 20. In the absence of differences which are large enough to meet the ⅘ths rule of thumb or a test of statistical significance, there is no reason to assume that the differences are reliable, or that they are based upon anything other than chance.

20. Q. Why is the ⅘ths rule called a rule of thumb?

A. Because it is not intended to be controlling in all circumstances. If, for the sake of illustration, we assume that nationwide statistics show that use of an arrest record would disqualify 10% of all Hispanic persons but only 4% of all whites other than Hispanic (hereafter non-Hispanic), the selection rate for that selection procedure is 90% for Hispanics and 96% for non-Hispanics. Therefore, the ⅘ rule of thumb would not indicate the presence of adverse impact (90% is approximately 94% of 96%). But in this example, the information is based upon nationwide statistics, and the sample is large enough to yield statistically significant results, and the difference (Hispanics are 2½ times as likely to be disqualified as non-Hispanics) is large enough to be practically significant. Thus, in this example the enforcement agencies would consider a disqualification based on an arrest record alone as having an adverse impact. Likewise, in *Gregory* v. *Litton Industries*, 472 F. 2d 631 (9th Cir., 1972), the court held that the employer violated Title VII by disqualifying persons from employment solely on the basis of an arrest record, where that disqualification had an adverse impact on blacks and was not shown to be justified by business necessity.

On the other hand, a difference of more than 20% in rates of selection may not provide a basis for finding adverse impact if the number of persons selected is very small. For example, if the employer selected three males and one female from an applicant pool of 20 males and 10 females, the ⅘ths rule would indicate adverse impact (selection rate for women is 10%; for men 15%; 1/15 or 66⅔% is less than 80%), yet the number of selections is too small to warrant a determination of adverse impact. In these circumstances, the enforcement agency would not require validity evidence in the absence of additional information (such as selection rates for a longer period of time) indicating adverse impact. For recordkeeping requirements, see Section 15A(2)(c) and Questions 84 and 85.

21. Q. Is evidence of adverse impact sufficient to warrant a validity study or an enforcement action where the numbers involved are so small that it is more likely than not that the difference could have occurred by chance? For example:

Applicants	Not hired	Hired	Selection rate percent hired
80 White	64	16	20
20 Black	17	3	15

White Selection Rate 20
Black Selection Rate 15
15 divided by 20=75% (which is less than 80%).

A. No. If the numbers of persons and the difference in selection rates are so small that it is likely that the difference could have occurred by chance, the Federal agencies will not assume the existence of adverse impact, in the absence of other evidence. In this example, the difference in selection rates is too small, given the small number of black applicants, to constitute adverse impact in the absence of other information (see Section 4D). If only one more black had been hired instead of a white the selection rate for blacks (20%) would be higher than that for whites (18.7%). Generally, it is inappropriate to require validity evidence or to take enforcement action where the number of persons and the difference in selection rates are so small that the selection of one different person for one job would shift the result from adverse impact against one group to a situation in which that group has a higher selection rate than the other group.

On the other hand, if a lower selection rate continued over a period of time, so as to constitute a pattern, then the lower selection rate would constitute adverse impact, warranting the need for validity evidence.

22. Q. Is it ever necessary to calculate the statistical significance of differences in selection rates to determine whether adverse impact exists?

A. Yes. Where large numbers of selections are made, relatively small differences in selection rates may nevertheless constitute adverse impact if they are both statistically and practically significant. See Section 4D and Question 20. For that reason, if there is a small difference in selection rates (one rate is more than 80% of the other), but large numbers of selections are involved, it would be appropriate to calculate the statistical significance of the difference in selection rates.

23. Q. When the ⅘th rule of thumb shows adverse impact, is there adverse impact under the Guidelines?

A. There usually is adverse impact, except where the number of persons selected and the difference in selection rates are very small. See Section 4D and Questions 20 and 21.

24. Q. Why do the Guidelines rely primarily upon the ⅘ths rule of thumb, rather than tests of statistical significance?

A. Where the sample of persons selected is not large, even a large real difference between groups is likely not to be confirmed by a test of statistical significance (at the usual .05 level of significance). For this reason, the Guidelines do not rely primarily upon a test of statistical significance, but use the ⅘ths rule of thumb as a practical and easy-to-administer measure of whether differences in selection rates are substantial. Many decisions in day-to-day life are made without reliance upon a test of statistical significance.

25. Q. Are there any circumstances in which the employer should evaluate components of a selection process, even though the overall selection process results in no adverse impact?

A. Yes, there are such circumstances: (1) Where the selection proce-

dure is a significant factor in the continuation of patterns of assignments of incumbent employees caused by prior discriminatory employment practices. Assume, for example, an employer who traditionally hired blacks as employees for the "laborer" department in a manufacturing plant, and traditionally hired only whites as skilled craftsmen. Assume further that the employer in 1962 began to use a written examination not supported by a validity study to screen incumbent employees who sought to enter the apprenticeship program for skilled craft jobs. The employer stopped making racial assignments in 1972. Assume further that for the last four years, there have been special recruitment efforts aimed at recent black high school graduates and that the selection process, which includes the written examination, has resulted in the selection of black applicants for apprenticeship in approximately the same rates as white applicants.

In those circumstances, if the written examination had an adverse impact, its use would tend to keep incumbent black employees in the laborer department, and deny them entry to apprenticeship programs. For that reason, the enforcement agencies would expect the user to evaluate the impact of the written examination, and to have validity evidence for the use of the written examination if it has an adverse impact.

(2) Where the weight of court decisions or administrative interpretations holds that a specific selection procedure is not job related in similar circumstances.

For example, courts have held that because an arrest is not a determination of guilt, an applicant's arrest record by itself does not indicate inability to perform a job consistent with the trustworthy and efficient operation of a business. Yet a no arrest record requirement has a nationwide adverse impact on some minority groups. Thus, an employer who refuses to hire applicants solely on the basis of an arrest record is on notice that this policy may be found to be discriminatory. *Gregory* v. *Litton Industries*, 472 F. 2d 631 (9th Cir., 1972) (excluding persons from employment solely on the basis of arrests, which has an adverse impact, held to violate Title VII). Similarly, a minimum height requirement disproportionately disqualifies women and some national origin groups, and has been held not to be job related in a number of cases. For example, in *Dothard* v. *Rawlinson*, 433 U.S. 321 (1977), the Court held that height and weight requirements not shown to be job related were violative of Title VII. Thus an employer using a minimum height requirement should have evidence of its validity.

(3) In addition, there may be other circumstances in which an enforcement agency may decide to request an employer to evaluate components of a selection process, but such circumstances would clearly be unusual. Any such decision will be made only at a high level in the agency. Investigators and compliance officers are not authorized to make this decision.

26. Q. Does the bottom line concept of Section 4C apply to the administrative processing of charges of discrimination filed with an issuing agency, alleging that a specific selection procedure is discriminatory?

A. No. The bottom line concept applies only to enforcement actions as defined in Section 16 of the Guidelines. Enforcement actions include only court enforcement actions and other similar proceedings as defined in Section 16I. The EEOC administrative processsing of charges of discrimination (investigation, finding of reasonable cause/no cause, and conciliation) required by Section 706(b) of Title VII are specifically exempted from the bottom line concept by the definition of an enforcement action. The bottom line concept is a result of a decision by the various enforcement agencies that, as a matter of prosecutorial discretion, they will devote their limited enforcement resources to the most serious offenders of equal employment opportunity laws. Since the concept is not a rule of law, it does not affect the discharge by the EEOC of its statutory responsibilities to investigate charges of discrimination, render an administrative finding on its investigation, and engage in voluntary conciliation efforts. Similarly, with respect to the other issuing agencies, the bottom line concept applies not to the processing of individual charges, but to the initiation of enforcement action.

27. Q. An employer uses one test or other selection procedure to select persons for a number of different jobs. Applicants are given the test, and the successful applicants are then referred to different departments and positions on the basis of openings available and their interests. The Guidelines appear to require assessment of adverse impact on a job-by-job basis (Section 15A(2)(a)). Is there some way to show that the test as a whole does not have adverse impact even though the proportions of members of each race, sex or ethnic group assigned to different jobs may vary?

A. Yes, in some circumstances. The Guidelines require evidence of validity only for those selection procedures which have an adverse impact, and which are part of a selection process which has an adverse impact. If the test is administered and used in the same fashion for a variety of jobs, the impact of that test can be assessed in the aggregate. The records showing the results of the test, and the total number of persons selected, generally would be sufficient to show the impact of the test. If the test has no adverse impact, it need not be validated.

But the absence of adverse impact of the test in the aggregate does not end the inquiry. For there may be discrimination or adverse impact in the assignment of individuals to, or in the selection of persons for, particular jobs. The Guidelines call for records to be kept and determinations of adverse impact to be made of the overall selection process on a job by job basis. Thus, if there is adverse impact in the assignment or selection procedures for a job even though there is no adverse impact from the test, the user should eliminate the adverse impact from the assignment procedure or justify the assignment procedure.

28. Q. The Uniform Guidelines apply to the requirements of Federal law prohibiting employment practices which discriminate on the grounds of race, color, religion, sex or national origin. However, records are required to be kept only by sex and by specified race and ethnic groups. How can adverse impact be determined for religious groups and for national origin groups other than those specified in Section 4B of the Guidelines?

A. The groups for which records are required to be maintained are the groups for which there is extensive evidence of continuing discriminatory practices. This limitation is designed in part to minimize the burden on employers for recordkeeping which may not be needed.

For groups for which records are not required, the person(s) complaining may obtain information from the employer or others (voluntarily or through legal process) to show that adverse impact has taken place. When that has been done, the various provisions of the Uniform Guidelines are fully applicable.

Whether or not there is adverse impact, Federal equal employment opportunity law prohibits any deliberate discrimination or disparate treatment on grounds of religion or national origin, as well as on grounds of sex, color, or race.

Whenever "ethnic" is used in the Guidelines or in these Questions and Answers, it is intended to include national origin and religion, as set forth in the statutes, executive orders, and regulations prohibiting discrimination. See Section 16P.

29. Q. What is the relationship between affirmative action and the requirements of the Uniform Guidelines?

A. The two subjects are different, although related. Compliance with the Guidelines does not relieve users of

their affirmative action obligations, including those of Federal contractors and subcontractors under Executive Order 11246. Section 13.

The Guidelines encourage the development and effective implementation of affirmative action plans or programs in two ways. First, in determining whether to institute action against a user on the basis of a selection procedure which has adverse impact and which has not been validated, the enforcement agency will take into account the general equal employment opportunity posture of the user with respect to the job classifications for which the procedure is used and the progress which has been made in carrying out any affirmative action program. Section 4E. If the user has demonstrated over a substantial period of time that it is in fact appropriately utilizing in the job or group of jobs in question the available race, sex or ethnic groups in the relevant labor force, the enforcement agency will generally exercise its discretion by not initiating enforcement proceedings based on adverse impact in relation to the applicant flow. Second, nothing in the Guidelines is intended to preclude the use of selection procedures, consistent with Federal law, which assist in the achievement of affirmative action objectives. Section 13A. See also, Questions 30 and 31.

30. Q. When may a user be race, sex or ethnic-conscious?

A. The Guidelines recognize that affirmative action programs may be race, sex or ethnic conscious in appropriate circumstances, (See Sections 4E and 13; See also Section 17, Appendix). In addition to obligatory affirmative action programs (See Question 29), the Guidelines encourage the adoption of voluntary affirmative action programs. Users choosing to engage in voluntary affirmative action are referred to EEOC's Guidelines on Affirmative Action (44 F.R. 4422, January 19, 1979). A user may justifiably be race, sex or ethnic-conscious in circumstances where it has reason to believe that qualified persons of specified race, sex or ethnicity have been or may be subject to the exclusionary effects of its selection procedures or other employment practices in its work force or particular jobs therein. In establishing long and short range goals, the employer may use the race, sex, or ethnic classification as the basis for such goals (Section 17(3) (a)).

In establishing a recruiting program, the employer may direct its recruiting activities to locations or institutions which have a high proportion of the race, sex, or ethnic group which has been excluded or underutilized (section 17(3) (b)). In establishing the pool of qualified persons from which final selections are to be made, the employer may take reasonable steps to assure that members of the excluded or underutilized race, sex, or ethnic group are included in the pool (Section 17(3) (e)).

Similarly, the employer may be race, sex or ethnic-conscious in determining what changes should be implemented if the objectives of the programs are not being met (Section 17(3) (g)).

Even apart from affirmative action programs a user may be race, sex or ethnic-conscious in taking appropriate and lawful measures to eliminate adverse impact from selection procedures (Section 6A).

31. Q. Section 6A authorizes the use of alternative selection procedures to eliminate adverse impact, but does not appear to address the issue of validity. Thus, the use of alternative selection procedures without adverse impact seems to be presented as an option in lieu of validation. Is that its intent?

A. Yes. Under Federal equal employment opportunity law the use of any selection procedure which has an adverse impact on any race, sex or ethnic group is discriminatory unless the procedure has been properly validated, or the use of the procedure is otherwise justified under Federal law. *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971); Section 3A. If a selection procedure has an adverse impact, therefore, Federal equal employment opportunity law authorizes the user to choose lawful alternative procedures which eliminate the adverse impact rather than demonstrating the validity of the original selection procedure.

Many users, while wishing to validate all of their selection procedures, are not able to conduct the validity studies immediately. Such users have the option of choosing alternative techniques which eliminate adverse impact, with a view to providing a basis for determining subsequently which selection procedures are valid and have as little adverse impact as possible.

Apart from Federal equal employment opportunity law, employers have economic incentives to use properly validated selection procedures. Nothing in Section 6A should be interpreted as discouraging the use of properly validated selection procedures; but Federal equal employment opportunity law does not require validity studies to be conducted unless there is adverse impact. See Section 2C.

III. General Questions Concerning Validity and the Use of Selection Procedures

32. Q. What is "validation" according to the Uniform Guidelines?

A. Validation is the demonstration of the job relatedness of a selection procedure. The Uniform Guidelines recognize the same three validity strategies recognized by the American Psychological Association:

(1) Criterion-related validity—a statistical demonstration of a relationship between scores on a selection procedure and job performance of a sample of workers.

(2) Content validity—a demonstration that the content of a selection procedure is representative of important aspects of performance on the job.

(3) Construct validity—a demonstration that (a) a selection procedure measures a construct (something believed to be an underlying human trait or characteristic, such as honesty) and (b) the construct is important for successful job performance.

33. Q. What is the typical process by which validity studies are reviewed by an enforcement agency?

A. The validity study is normally requested by an enforcement officer during the course of a review. The officer will first determine whether the user's data show that the overall selection process has an adverse impact, and if so, which component selection procedures have an adverse impact. See Section 15A(3). The officer will then ask for the evidence of validity for each procedure which has an adverse impact. See Sections 15B, C, and D. This validity evidence will be referred to appropriate personnel for review. Agency findings will then be communicated to the user.

34. Q. Can a user send its validity evidence to an enforcement agency before a review, so as to assure its validity?

A. No. Enforcement agencies will not review validity reports except in the context of investigations or reviews. Even in those circumstances, validity evidence will not be reviewed without evidence of how the selection procedure is used and what impact its use has on various race, sex, and ethnic groups.

35. Q. May reports of validity prepared by publishers of commercial tests and printed in test manuals or other literature be helpful in meeting the Guidelines?

A. They may be. However, it is the user's responsibility to determine that the validity evidence is adequate to meet the Guidelines. See Section 7, and Questions 43 and 66. Users should not use selection procedures which are likely to have an adverse impact without reviewing the evidence of validity to make sure that the standards of the Guidelines are met.

The following questions and answers (36-81) assume that a selection procedure has an adverse impact and is part of a selection process that has an adverse impact.

36. Q. How can users justify continued use of a procedure on a basis other than validity?

A. Normally, the method of justifying selection procedures with an adverse impact and the method to which the Guidelines are primarily addressed, is validation. The method of justification of a procedure by means other than validity is one to which the Guidelines are not addressed. See Section 6B. In *Griggs* v. *Duke Power Co.*, 401 U.S. 424, the Supreme Court indicated that the burden on the user was a heavy one, but that the selection procedure could be used if there was a "business necessity" for its continued use; therefore, the Federal agencies will consider evidence that a selection procedure is necessary for the safe and efficient operation of a business to justify continued use of a selection procedure.

37. Q. Is the demonstration of a rational relationship (as that term is used in constitutional law) between a selection procedure and the job sufficient to meet the validation requirements of the Guidelines?

A. No. The Supreme Court in *Washington* v. *Davis*, 426 U.S. 229 (1976) stated that different standards would be applied to employment discrimination allegations arising under the Constitution than would be applied to employment discrimination allegations arising under Title VII. The *Davis* case arose under the Constitution, and no Title VII violation was alleged. The Court applied a traditional constitutional law standard of "rational relationship" and said that it would defer to the "seemingly reasonable acts of administrators and executives." However, it went on to point out that under Title VII, the appropriate standard would still be an affirmative demonstration of the relationship between the selection procedure and measures of job performance by means of accepted procedures of validation and it would be an "insufficient response to demonstrate some rational basis" for a selection procedure having an adverse impact. Thus, the mere demonstration of a rational relationship between a selection procedure and the job does not meet the requirement of Title VII of the Civil Rights Act of 1964, or of Executive Order 11246, or the State and Local Fiscal Assistance Act of 1972, as amended (the revenue sharing act) or the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and will not meet the requirements of these Guidelines for a validity study. The three validity strategies called for by these Guidelines all require evidence that the selection procedure is related to successful performance on the job. That evidence may be obtained through local validation or through validity studies done elsewhere.

38. Q. Can a user rely upon written or oral assertions of validity instead of evidence of validity?

A. No. If a user's selection procedures have an adverse impact, the user is expected to produce evidence of the validity of the procedures as they are used. Thus, the unsupported assertion by anyone, including representatives of the Federal government or State Employment Services, that a test battery or other selection procedure has been validated is not sufficient to satisfy the Guidelines.

39. Q. Are there any formal requirements imposed by these Guidelines as to who is allowed to perform a validity study?

A. No. A validity study is judged on its own merits, and may be performed by any person competent to apply the principles of validity research, including a member of the user's staff or a consultant. However, it is the user's responsibility to see that the study meets validity provisions of the Guidelines, which are based upon professionally accepted standards. See Question 42.

40. Q. What is the relationship between the validation provisions of the Guidelines and other statements of psychological principles, such as the *Standards for Educational and Psychological Tests*, published by the American Psychological Association (Wash., D.C., 1974) (hereinafter "American Psychological Association *Standards*")?

A. The validation provisions of the Guidelines are designed to be consistent with the generally accepted standards of the psychological profession. These Guidelines also interpret Federal equal employment opportunity law, and embody some policy determinations of an administrative nature. To the extent that there may be differences between particular provisions of the Guidelines and expressions of validation principles found elsewhere, the Guidelines will be given precedence by the enforcement agencies.

41. Q. When should a validity study be carried out?

A. When a selection procedure has adverse impact on any race, sex or ethnic group, the Guidelines generally call for a validity study or the elimination of adverse impact. See Sections 3A and 6, and Questions 9, 31, and 36. If a selection procedure has adverse impact, its use in making employment decisions without adequate evidence of validity would be inconsistent with the Guidelines. Users who choose to continue the use of a selection procedure with an adverse impact until the procedure is challenged increase the risk that they will be found to be engaged in discriminatory practices and will be liable for back pay awards, plaintiffs' attorneys' fees, loss of Federal contracts, subcontracts or grants, and the like. Validation studies begun on the eve of litigation have seldom been found to be adequate. Users who choose to validate selection procedures should consider the potential benefit from having a validation study completed or well underway before the procedures are administered for use in employment decisions.

42. Q. Where can a user obtain professional advice concerning validation of selection procedures?

A. Many industrial and personnel psychologists validate selection procedures, review published evidence of validity and make recommendations with respect to the use of selection procedures. Many of these individuals are members or fellows of Division 14 (Industrial and Organizational Psychology) or Division 5 (Evaluation and Measurement) of the American Psychological Association. They can be identified in the membership directory of that organization. A high level of qualification is represented by a diploma in Industrial Psychology awarded by the American Board of Professional Psychology.

Individuals with the necessary competence may come from a variety of backgrounds. The primary qualification is pertinent training and experience in the conduct of validation research.

Industrial psychologists and other persons competent in the field may be found as faculty members in colleges and universities (normally in the departments of psychology or business administration) or working as individual consultants or as members of a consulting organization.

Not all psychologists have the necessary expertise. States have boards which license and certify psychologists, but not generally in a specialty such as industrial psychology. However, State psychological associations may be a source of information as to individuals qualified to conduct validation studies. Addresses of State psychological associations or other sources of information may be obtained from the American Psychological Association, 1200 Seventeenth Street, NW., Washington, D.C. 20036.

43. Q. Can a selection procedure be a valid predictor of performance on a job in a certain location and be invalid for predicting success on a different job or the same job in a different location?

A. Yes. Because of differences in work behaviors, criterion measures, study samples or other factors, a selection procedure found to have validity in one situation does not necessarily have validity in different circumstances. Conversely, a selection proce-

dure not found to have validity in one situation may have validity in different circumstances. For these reasons, the Guidelines requires that certain standards be satisfied before a user may rely upon findings of validity in another situation. Section 7 and Section 14D. See also, Question 66. Cooperative and multi-unit studies are however encouraged, and, when those standards of the Guidelines are satisfied, validity evidence specific to each location is not required. See Section 7C and Section 8.

44. Q. Is the user of a selection procedure required to develop the procedure?

A. No. A selection procedure developed elsewhere may be used. However, the user has the obligation to show that its use for the particular job is consistent with the Guidelines. See Section 7.

45. Q. Do the Guidelines permit users to engage in cooperative efforts to meet the Guidelines?

A. Yes. The Guidelines not only permit but encourage such efforts. Where users have participated in a cooperative study which meets the validation standards of these Guidelines and proper account has been taken of variables which might affect the applicability of the study to specific users, validity evidence specific to each user will not be required. Section 8.

46. Q. Must the same method for validation be used for all parts of a selection process?

A. No. For example, where a selection process includes both a physical performance test and an interview, the physical test might be supported on the basis of content validity, and the interview on the basis of a criterion-related study.

47. Q. Is a showing of validity sufficient to assure the lawfulness of the use of a selection procedure?

A. No. The use of the selection procedure must be consistent with the validity evidence. For example, if a research study shows only that, at a given passing score the test satisfactorily screens out probable failures, the study would not justify the use of substantially different passing scores, or of ranked lists of those who passed. See Section 5G. Similarly, if the research shows that a battery is valid when a particular set of weights is used, the weights actually used must conform to those that were established by the research.

48. Q. Do the Guidelines call for a user to consider and investigate alternative selection procedures when conducting a validity study?

A. Yes. The Guidelines call for a user, when conducting a validity study, to make a reasonable effort to become aware of suitable alternative selection procedures and methods of use which have as little adverse impact as possible, and to investigate those which are suitable. Section 3B.

An alternative procedure may not previously have been used by the user for the job in question and may not have been extensively used elsewhere. Accordingly, the preliminary determination of the suitability of the alternative selection procedure for the user and job in question may have to be made on the basis of incomplete information. If on the basis of the evidence available, the user determines that the alternative selection procedure is likely to meet its legitimate needs, and is likely to have less adverse impact than the existing selection procedure, the alternative should be investigated further as a part of the validity study. The extent of the investigation should be reasonable. Thus, the investigation should continue until the user has reasonably concluded that the alternative is not useful or not suitable, or until a study of its validity has been completed. Once the full validity study has been completed, including the evidence concerning the alternative procedure, the user should evaluate the results of the study to determine which procedure should be used. See Section 3B and Question 50.

49. Q. Do the Guidelines call for a user *continually* to investigate "suitable alternative selection procedures and suitable alternative methods of using the selection procedure which have as little adverse impact as possible"?

A. No. There is no requirement for continual investigation. A reasonable investigation of alternatives is called for by the Guidelines as a part of any validity study. Once the study is complete and validity has been found, however, there is generally no obligation to conduct further investigations, until such time as a new study is called for. See, Sections 3B and 5K. If a government agency, complainant, civil rights organization or other person having a legitimate interest shows such a user an alternative procedure with less adverse impact and with substantial evidence of validity for the same job in similar circumstances, the user is obliged to investigate only the particular procedure which has been presented. Section 3B.

50. Q. In what circumstances do the Guidelines call for the use of an alternative selection procedure or an alternative method of using the procedure?

A. The alternative selection procedure (or method of use) should be used when it has less adverse impact and when the evidence shows that its validity is substantially the same or greater for the same job in similar circumstances. Thus, if under the original selection procedure the selection rate for black applicants was only one half (50 percent) that of the selection rate for white applicants, whereas under the alternative selection procedure the selection rate for blacks is two-thirds (67 percent) that of white applicants, the new alternative selection procedure should be used when the evidence shows substantially the same or greater validity for the alternative than for the original procedure. The same principles apply to a new user who is deciding what selection procedure to institute.

51. Q. What are the factors to be considered in determining whether the validity for one procedure is substantially the same as or greater than that of another procedure?

A. In the case of a criterion-related validity study, the factors include the importance of the criteria for which significant relationships are found, the magnitude of the relationship between selection procedure scores and criterion measures, and the size and composition of the samples used. For content validity, the strength of validity evidence would depend upon the proportion of critical and/or important job behaviors measured, and the extent to which the selection procedure resembles actual work samples or work behaviors. Where selection procedures have been validated by different strategies, or by construct validity, the determination should be made on a case by case basis.

52. Q. The Guidelines require consideration of alternative procedures and alternative methods of use, in light of the evidence of validity and utility and the degree of adverse impact of the procedure. How can a user know that any selection procedure with an adverse impact is lawful?

A. The Uniform Guidelines (Section 5G) expressly permit the use of a procedure in a manner supported by the evidence of validity and utility, even if another method of use has a lesser adverse impact. With respect to consideration of alternative selection procedures, if the user made a reasonable effort to become aware of alternative procedures, has considered them and investigated those which appear suitable as a part of the validity study, and has shown validity for a procedure, the user has complied with the Uniform Guidelines. The burden is then on the person challenging the procedure to show that there is another procedure with better or substantially equal validity which will accomplish the same legitimate business purposes with less adverse impact. Section 3B. See also, *Albemarle Paper Co. v. Moody*, 422 U.S. 405.

53. Q. Are the Guidelines consistent with the decision of the Supreme Court in *Furnco Construction Corp. v. Waters*, —— *U.S.* ——, 98 S. Ct. 2943 (1978) where the Court stated: "Title

VII * * * does not impose a duty to adopt a hiring procedure that maximizes hiring of minority employees."

A. Yes. The quoted statement in *Furnco* v. *Waters* was made on a record where there was no adverse impact in the hiring process, no different treatment, no intentional discrimination, and no contractual obligations under E.O. 11246. Section 3B of the Guidelines is predicated upon a finding of adverse impact. Section 3B indicates that, when two or more selection procedures are available which serve a legitimate business purpose with substantially equal validity, the user should use the one which has been demonstrated to have the lesser adverse impact. Part V of the Overview of the Uniform Guidelines, in elaborating on this principle, states: "Federal equal employment opportunity law has added a requirement to the process of validation. In conducting a validation study, the employer should consider available alternatives which will achieve its legitimate purpose with lesser adverse impact."

Section 3B of the Guidelines is based on the principle enunciated in the Supreme Court decision in *Albermarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975) that, even where job relatedness has been proven, the availability of other tests or selection devices which would also serve the employer's legitimate interest in "efficient and trustworthy workmanship" without a similarly undesirable racial effect would be evidence that the employer was using its tests merely as a pretext for discrimination.

Where adverse impact still exists, even though the selection procedure has been validated, there continues to be an obligation to consider alternative procedures which reduce or remove that adverse impact if an opportunity presents itself to do so without sacrificing validity. Where there is no adverse impact, the *Furnco* principle rather than the *Albermarle* principle is applicable.

IV. Technical Standards

54. Q. How does a user choose which validation strategy to use?

A. A user should select a validation strategy or strategies which are (1) appropriate for the type of selection procedure, the job, and the employment situation, and (2) technically and administratively feasible. Whatever method of validation is used, the basic logic is one of prediction; that is, the presumption that level of performance on the selection procedure will, on the average, be indicative of level of performance on the job after selection. Thus, a criterion-related study, particularly a predictive one, is often regarded as the closest to such an ideal. See American Psychological Association *Standards*, pp. 26-27.

Key conditions for a criterion-related study are a substantial number of individuals for inclusion in the study, and a considerable range of performance on the selection and criterion measures. In addition, reliable and valid measures of job performance should be available, or capable of being developed. Section 14B(1). Where such circumstances exist, a user should consider use of the criterion-related strategy.

Content validity is appropriate where it is technically and administratively feasible to develop work samples or measures of operationally defined skills, knowledges, or abilities which are a necessary prerequisite to observable work behaviors. Content validity is not appropriate for demonstrating the validity of tests of mental processes or aptitudes or characteristics; and is not appropriate for knowledges, skills or abilities which an employee will be expected to learn on the job. Section 14C(1)

The application of a construct validity strategy to support employee selection procedures is newer and less developed than criterion-related or content validity strategies. Continuing research may result in construct validity becoming more widely used. Because construct validity represents a generalization of findings, one situation in which construct validity might hold particular promise is that where it is desirable to use the same selection procedures for a variety of jobs. An overriding consideration in whether or not to consider construct validation is the availability of an individual with a high level of expertise in this field.

In some situations only one kind of validation study is likely to be appropriate. More than one strategy may be possible in other circumstances, in which case administrative considerations such as time and expense may be decisive. A combination of approaches may be feasible and desirable.

55. Q. Why do the Guidelines recognize only content, construct and criterion-related validity?

A. These three validation strategies are recognized in the Guidelines since they represent the current professional consensus. If the professional commmunity recognizes new strategies or substantial modifications of existing strategies, they will be considered and, if necessary, changes will be made in the Guidelines. Section 5A.

56. Q. Why don't the Uniform Guidelines state a preference for criterion-related validity over content or construct validity?

A. Generally accepted principles of the psychological profession support the use of criterion-related, content or construct validity strategies as appropriate. American Psychological Association *Standards*, E, pp. 25-26. This use was recognized by the supreme Court in *Washington* v. *Davis*, 426 U.S. 229, 247, fn. 13. Because the Guidelines describe the conditions under which each validity strategy is inappropriate, there is no reason to state a general preference for any one validity strategy.

57. Q. Are the Guidelines intended to restrict the development of new testing strategies, psychological theories, methods of job analysis or statistical techniques?

A. No. The Guidelines are concerned with the validity and fairness of selection procedures used in making employment decisions, and are not intended to limit research and new developments. See Question 55.

58. Q. Is a full job analysis necessary for all validity studies?

A. It is required for all content and construct studies, but not for all criterion-related studies. See Sections 14A and 14B(2). Measures of the results or outcomes of work behaviors such as production rate or error rate may be used without a full job analysis where a review of information about the job shows that these criteria are important to the employment situation of the user. Similarly, measures such as absenteeism, tardiness or turnover may be used without a full job analysis if these behaviors are shown by a review of information about the job to be important in the specific situation. A rating of overall job performance may be used without a full job analysis only if the user can demonstrate its appropriateness for the specific job and employment situation through a study of the job. The Supreme Court held in *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975), that measures of overall job performance should be carefully developed and their use should be standardized and controlled.

59. Q. Section 5J on interim use requires the user to have available substantial evidence of validity. What does this mean?

A. For purposes of compliance with 5J, "substantial evidence" means evidence which may not meet all the validation requirements of the Guidelines but which raises a strong inference that validity pursuant to these standards will soon be shown. Section 5J is based on the proposition that it would not be an appropriate allocation of Federal resources to bring enforcement proceedings against a user who would soon be able to satisfy fully the standards of the Guidelines. For example, a criterion-related study may have produced evidence which meets almost all of the requirements of the Guidelines with the exception that the gathering of the data of test fair-

ness is still in progress and the fairness study has not yet produced results. If the correlation coefficient for the group as a whole permits the strong inference that the selection procedure is valid, then the selection procedure may be used on an interim basis pending the completion of the fairness study.

60. Q. What are the potential consequences to a user when a selection procedure is used on an interm basis?

A. The fact that the Guidelines permit interim use of a selection procedure under some conditions does not immunize the user from liability for back pay, attorney fees and the like, should use of the selection procedure later be found to be in violation of the Guidelines. Section 5J. For this reason, users should take steps to come into full compliance with the Guidelines as soon as possible. It is also appropriate for users to consider ways of minimizing adverse impact during the period of interim use.

61. Q. Must provisions for retesting be allowed for job-knowledge tests, where knowledge of the test content would assist in scoring well on it the second time?

A. The primary intent of the provision for retesting is that an applicant who was not selected should be given another chance. Particularly in the case of job-knowledge tests, security precautions may preclude retesting with the same test after a short time. However, the opportunity for retesting should be provided for the same job at a later time, when the applicant may have acquired more of the relevant job knowledges.

62 Q. Under what circumstances may a selection procedure be used for ranking?

A. Criterion-related and construct validity strategies are essentially empirical, statistical processes showing a relationship between performance on the selection procedure and performance on the job. To justify ranking under such validity strategies, therefore, the user need show mathematical support for the proposition that persons who receive higher scores on the procedure are likely to perform better on the job.

Content validity, on the other hand, is primarily a judgmental process concerned with the adequacy of the selection procedure as a sample of the work behaviors. Use of a selection procedure on a ranking basis may be supported by content validity if there is evidence from job analysis or other empirical data that what is measured by the selection procedure is associated with differences in levels of job performance. Section 14C(9); see also Section 5G.

Any conclusion that a content validated procedure is appropriate for ranking must rest on an inference that higher scores on the procedure are related to better job performance. The more closely and completely the selection procedure approximates the important work behaviors, the easier it is to make such an inference. Evidence that better performance on the procedure is related to greater productivity or to performance of behaviors of greater difficulty may also support such an inference.

Where the content and context of the selection procedure are unlike those of the job, as, for example, in many paper-and-pencil job knowledge tests, it is difficult to infer an association between levels of performance on the procedure and on the job. To support a test of job knowledge on a content validity basis, there must be evidence of a specific tie-in between each item of knowledge tested and one or more work behaviors. See Question 79. To justify use of such a test for ranking, it would also have to be demonstrated from empirical evidence either that mastery of more difficult work behaviors, or that mastery of a greater scope of knowledge corresponds to a greater scope of important work behaviors.

For example, for a particular warehouse worker job, the job analysis may show that lifting a 50-pound object is essential, but the job analysis does not show that lifting heavier objects is essential or would result in significantly better job performance. In this case a test of ability to lift 50 pounds could be justified on a content validity basis for a pass/fail determination. However, ranking of candidates based on relative amount of weight that can be lifted would be inappropriate.

In another instance, a job analysis may reflect that, for the job of machine operator, reading of simple instructions is not a major part of the job but is essential. Thus, reading would be a critical behavior under the Guidelines. See Section 14C(8). since the job analysis in this example did not also show that the ability to read such instructions more quickly or to understand more complex materials would be likely to result in better job performance, a reading test suported by content validity alone should be used on a pass/fail rather than a ranking basis. In such circumstances, use of the test for ranking would have to be supported by evidence from a criterion-related (or construct) validity study.

On the other hand, in the case of a person to be hired for a typing pool, the job analysis may show that the job consists almost entirely of typing from manuscript, and that productivity can be measured directly in terms of finished typed copy. For such a job, typing constitutes not only a critical behavior, but it constitutes most of the job. A higher score on a test which measured words per minute typed, with adjustments for errors, would therefore be likely to predict better job performance than a significantly lower score. Ranking or grouping based on such a typing test would therefore be appropriate under the Guidelines.

63. Q. If selection procedures are administered by an employment agency or a consultant for an employer, is the employer relieved of responsibilities under the Guidelines?

A. No. The employer remains responsible. It is therefore expected that the employer will have sufficient information available to show: (a) What selection procedures are being used on its behalf; (b) the total number of applicants for referral by race, sex and ethnic group; (c) the number of persons, by race, sex and ethnic group, referred to the employer; and (d) the impact of the selection procedures and evidence of the validity of any such procedure having an adverse impact as determined above.

A. CRITERION-RELATED VALIDITY

64. Q. Under what circumstances may success in training be used as a criterion in criterion-related validity studies?

A. Success in training is an appropriate criterion when it is (1) necessary for successful job performance or has been shown to be related to degree of proficiency on the job and (2) properly measured. Section 14B(3). The measure of success in training should be carefully developed to ensure that factors which are not job related do not influence the measure of training success. Section 14B(3).

65. Q. When may concurrent validity be used?

A. A concurrent validity strategy assumes that the findings from a criterion-related validity study of current employees can be applied to applicants for the same job. Therefore, if concurrent validity is to be used, differences between the applicant and employee groups which might affect validity should be taken into account. The user should be particularly concerned with those differences between the applicant group and current employees used in the research sample which are caused by work experience or other work related events or by prior selection of employees and selection of the sample. See Section 14B(4).

66. Q. Under what circumstances can a selection procedure be supported (on other than an interim basis) by a criterion-related validity study done elsewhere?

A. A validity study done elsewhere may provide sufficient evidence if four conditions are met (Sec. 7B):

1. The evidence from the other studies clearly demonstrates that the procedure was valid in its use elsewhere.

2. The job(s) for which the selection procedure will be used closely matches the job(s) in the original study as shown by a comparison of major work behaviors as shown by the job analyses in both contexts.

3. Evidence of fairness from the other studies is considered for those groups constituting a significant factor in the user's labor market. Section 7B(3). Where the evidence is not available the user should conduct an internal study of test fairness, if technically feasible. Section 7B(3).

4. Proper account is taken of variables which might affect the applicability of the study in the new setting, such as performance standards, work methods, representativeness of the sample in terms of experience or other relevant factors, and the currency of the study.

67. Q. What does "unfairness of a selection procedure" mean?

A. When a specific score on a selection procedure has a different meaning in terms of expected job performance for members of one race, sex or ethnic group than the same score does for members of another group, the use of that selection procedure may be unfair for members of one of the groups. See section 16V. For example, if members of one group have an average score of 40 on the selection procedure, but perform on the job as well as another group which has an average score of 50, then some uses of the selection procedure would be unfair to the members of the lower scoring group. See Question 70.

68. Q. When should the user investigate the question of fairness?

A. Fairness should be investigated generally at the same time that a criterion-related validity study is conducted, or as soon thereafter as feasible. Section 14B(8).

69. Q. Why do the Guidelines require that users look for evidence of unfairness?

A. The consequences of using unfair selection procedures are severe in terms of discriminating against applicants on the basis of race, sex or ethnic group membership. Accordingly, these studies should be performed routinely where technically feasible and appropriate, whether or not the probability of finding unfairness is small. Thus, the Supreme Court indicated in *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, that a validation study was "materially deficient" because, among other reasons, it failed to investigate fairness where it was not shown to be unfeasible to do so. Moreover, the American Psychological Association *Standards* published in 1974 call for the investigation of test fairness in criterion-related studies wherever feasible (pp. 43-44).

70. Q. What should be done if a selection procedure is unfair for one or more groups in the relevant labor market?

A. The Guidelines discuss three options. See Section 14B(8)(d). First, the selection instrument may be replaced by another validated instrument which is fair to all groups. Second, the selection instrument may be revised to eliminate the sources of unfairness. For example, certain items may be found to be the only ones which cause the unfairness to a particular group, and these items may be deleted or replaced by others. Finally, revisions may be made in the method of use of the selection procedure to ensure that the probability of being selected is compatible with the probability of successful job performance.

The Federal enforcement agencies recognize that there is serious debate in the psychological profession on the question of test fairness, and that information on that concept is developing. Accordingly, the enforcement agencies will consider developments in this field in evaluating actions occasioned by a finding of test unfairness.

71. Q. How is test unfairness related to differential validity and to differential prediction?

A. Test unfairness refers to use of selection procedures based on scores when members of one group characteristically obtain lower scores than members of another group, and the differences are not reflected in measures of job performance. See Sections 16V and 14B(8)(a), and Question 67.

Differential validity and test unfairness are conceptually distinct. Differential validity is defined as a situation in which a given instrument has significantly different validity coefficients for different race, sex or ethnic groups. Use of a test may be unfair to some groups even when differential validity is not found.

Differential prediction is a central concept for one definition of test unfairness. Differential prediction occurs when the use of the same set of scores systematically overpredicts or underpredicts job performance for members of one group as compared to members of another group.

Other definitions of test unfairness which do not relate to differential prediction may, however, also be appropriately applied to employment decisions. Thus these Guidelines are not intended to choose between fairness models as long as the model selected is appropriate to the manner in which the selection procedure is used.

72. Q. What options does a user have if a criterion-related study is appropriate but is not feasible because there are not enough persons in the job?

A. There are a number of options the user should consider, depending upon the particular facts and circumstances, such as:

1. Change the procedure so as to eliminate adverse impact (see Section 6A);

2. Validate a procedure through a content validity strategy, if appropriate (see Section 14C and Questions 54 and 74);

3. Use a selection procedure validated elsewhere in conformity with the Guidelines (see Sections 7-8 and Question 66);

4. Engage in a cooperative study with other facilities or users (in cooperation with such users either bilaterally or through industry or trade associations or governmental groups), or participate in research studies conducted by the state employment security system. Where different locations are combined, care is needed to insure that the jobs studied are in fact the same and that the study is adequate and in conformity with the Guidelines (see Sections 8 and 14 and Question 45).

5. Combine essentially similar jobs into a single study sample. See Section 14B(1).

B. CONTENT VALIDITY

73. Q. Must a selection procedure supported by content validity be an actual "on the job" sample of work behaviors?

A. No. The Guidelines emphasize the importance of a close approximation between the content of the selection procedure and the observable behaviors or products of the job, so as to minimize the inferential leap between performance on the selection procedure and job performance. However, the Guidelines also permit justification on the basis of content validity of selection procedures measuring knowledges, skills, or abilities which are not necessarily samples of work behaviors if: (1) The knowledge, skill, or ability being measured is operationally defined in accord with Section 14C(4); and (2) that knowledge, skill, or ability is a prerequisite for critical or important work behaviors. In addition users may justify a requirement for training, or for experience obtained from prior employment or volunteer work, on the basis of content validity, even though the prior training or experience does not duplicate the job. See Section 14B(6).

74. Q. Is the use of a content validity strategy appropriate for a procedure measuring skills or knowledges which are taught in training after initial employment?

A. Usually not. The Guidelines state (Section 14C(1)) that content validity is not appropriate where the selection procedure involves knowledges, skills, or abilities which the employee will be expected to learn "on the job". The phrase "on the job" is intended to apply to training which occurs after hiring, promotion or transfer. However, if an ability, such as speaking and understanding a language, takes a substantial length of time to learn, is required for successful job performance, and is not taught to those initial hires who possess it in advance, a test for that ability may be supported on a content validity basis.

75. Q. Can a measure of a trait or construct be validated on the basis of content validity?

A. No. Traits or constructs are by definition underlying characteristics which are intangible and are not directly observable. They are therefore not appropriate for the sampling approach of content validity. Some selection procedures, while labeled as construct measures, may actually be samples of observable work behaviors. Whatever the label, if the operational definitions are in fact based upon observable work behaviors, a selection procedure measuring those behaviors may be appropriately supported by a content validity strategy. For example, while a measure of the construct "dependability" should not be supported on the basis of content validity, promptness and regularity of attendance in a prior work record are frequently inquired into as a part of a selection procedure, and such measures may be supported on the basis of content validity.

76. Q. May a test which measures what the employee has learned in a training program be justified for use in employment decisions on the basis of content validity?

A. Yes. While the Guidelines (Section 14C(1)) note that content validity is not an appropriate strategy for knowledges, skills or abilities which an employee "will be expected to learn on the job", nothing in the Guidelines suggests that a test supported by content validity is not appropriate for determining what the employee has learned on the job, or in a training program. If the content of the test is relevant to the job, it may be used for employment decisions such as retention or assignment. See Section 14C(7).

77. Q. Is a task analysis necessary to support a selection procedure based on content validity?

A. A description of all tasks is not required by the Guidelines. However, the job analysis should describe all important work behaviors and their relative importance and their level of difficulty. Sections 14C(2) and 15C(3): The job analysis should focus on observable work behaviors and, to the extent appropriate, observable work products, and the tasks associated with the important observable work behaviors and/or work products. The job analysis should identify how the critical or important work behaviors are used in the job, and should support the content of the selection procedure.

78. Q. What is required to show the content validity of a paper-and-pencil test that is intended to approximate work behaviors?

A. Where a test is intended to replicate a work behavior, content validity is established by a demonstration of the similarities between the test and the job with respect to behaviors, products, and the surrounding environmental conditions. Section 14B(4).

Paper-and-pencil tests which are intended to replicate a work behavior are most likely to be appropriate where work behaviors are performed in paper and pencil form (e.g., editing and bookkeeping). Paper-and-pencil tests of effectiveness in interpersonal relations (*e.g.*, sales or supervision), or of physical activities (*e.g.*, automobile repair) or ability to function properly under danger (*e.g.*, firefighters) generally are not close enough approximations of work behaviors to show content validity.

The appropriateness of tests of job knowledge, whether or not in pencil and paper form, is addressed in Question 79.

79. Q. What is required to show the content validity of a test of a job knowledge?

A. There must be a defined, well recognized body of information, and knowledge of the information must be prerequisite to performance of the required work behaviors. The work behavior(s) to which each knowledge is related should be identified on an item by item basis. The test should fairly sample the information that is actually used by the employee on the job, so that the level of difficulty of the test items should correspond to the level of difficulty of the knowledge as used in the work behavior. See Section 14C(1) and (4).

80. Q. Under content validity, may a selection procedure for entry into a job be justified on the grounds that the knowledges, skills or abilities measured by the selection procedure are prerequisites to successful performance in a training program?

A. Yes, but only if the training material and the training program closely approximate the content and level of difficulty of the job and if the knowledges, skills or abilities are not those taught in the training program. For example, if training materials are at a level of reading difficulty substantially in excess of the reading difficulty of materials used on the job, the Guidelines would not permit justification on a content validity basis of a reading test based on those training materials for entry into the job.

Under the Guidelines a training program itself is a selection procedure if passing it is a prerequisite to retention or advancement. See Section 2C and 14C(17). As such, the content of the training program may only be justified by the relationship between the program and critical or important behaviors of the job itself, or through a demonstration of the relationship between measures of performance in training and measures of job performance.

Under the example given above, therefore, where the requirements in the training materials exceed those on the job, the training program itself could not be validated on a content validity basis if passing it is a basis for retention or promotion.

C. CONSTRUCT VALIDITY

81. Q. In Section 5, "General Standards for Validity Studies," construct validity is identified as no less acceptable than criterion-related and content validity. However, the specific requirements for construct validity, in Section 14D, seem to limit the generalizability of construct validity to the rules governing criterion-related validity. Can this apparent inconsistency be reconciled?

A. Yes. In view of the developing nature of construct validation for employment selection procedures, the approach taken concerning the generalizability of construct validity (section 14D) is intended to be a cautious one. However, construct validity may be generalized in circumstances where transportability of tests supported on the basis of criterion-related validity would not be appropriate. In establishing transportability of criterion-related validity, the jobs should have substantially the same major work behaviors. Section 7B(2). Construct validity, on the other hand, allows for situations where only some of the important work behaviors are the same. Thus, well-established measures of the construct which underlie particular work behaviors and which have been shown to be valid for some jobs may be generalized to other jobs which have some of the same work behaviors but which are different with respect to other work behaviors. Section 14D(4).

As further research and professional guidance on construct validity in employment situations emerge, additional extensions of construct validity for employee selection may become generally accepted in the profession. The agencies encourage further research and professional guidance with respect

to the appropriate use of construct validity.

V. RECORDS AND DOCUMENTATION

82. Q. Do the Guidelines have simplified recordkeeping for small users (employers who employ one hundred or fewer employees and other users not required to file EEO-1, *et seq.* reports)?

A. Yes. Although small users are fully covered by Federal equal employment opportunity law, the Guidelines have reduced their record-keeping burden. See option in Section 15A(1). Thus, small users need not make adverse impact determinations nor are they required to keep applicant data on a job-by-job basis. The agencies also recognize that a small user may find that some or all validation strategies are not feasible. See Question 54. If a small user has reason to believe that its selection procedures have adverse impact and validation is not feasible, it should consider other options. See Sections 7A and 8 and Questions 31, 36, 45, 66, and 72.

83. Q. Is the requirement in the Guidelines that users maintain records of the race, national origin, and sex of employees and applicants constitutional?

A. Yes. For example, the United States Court of Appeals for the First Circuit rejected a challenge on constitutional and other grounds to the Equal Employment Opportunity Commission regulations requiring State and local governmental units to furnish information as to race, national origin and sex of employees. *United States* v. *New Hampshire,* 539 F. 2d 277 (1st Cir. 1976), *cert. denied,* sub nom. *New Hampshire* v. *United States,* 429 U.S. 1023. The Court held that the recordkeeping and reporting requirements promulgated under Title VII of the Civil Rights Act of 1964, as amended, were reasonably necessary for the Federal agency to determine whether the state was in compliance with Title VII and thus were authorized and constitutional. The same legal principles apply to recordkeeping with respect to applicants.

Under the Supremacy Clause of the Constitution, the Federal law requiring maintenance of records identifying race, sex and national origin overrides any contrary provision of State law. See Question 8.

The agencies recognize, however, that such laws have been enacted to prevent misuse of this information. Thus, employers should take appropriate steps to ensure proper use of all data. See Question #88.

84. Q. Is the user obliged to keep records which show whether its selection processes have an adverse impact on race, sex, or ethnic groups?

A. Yes. Under the Guidelines users are obliged to maintain evidence indicating the impact which their selection processes have on identifiable race, sex or ethnic groups. Sections 4 A and B. If the selection process for a job does have an adverse impact on one or more such groups, the user is expected to maintain records showing the impact for the individual procedures. Section 15A(2).

85. Q. What are the recordkeeping obligations of a user who cannot determine whether a selection process for a job has adverse impact because it makes an insufficient number of selections for that job in a year?

A. In such circumstances the user should collect, maintain, and have available information on the impact of the selection process and the component procedures until it can determine that adverse impact does not exist for the overall process or until the job has changed substantially. Section 15A(2)(c).

86. Q. Should applicant and selection information be maintained for race or ethnic groups constituting less than 2% of the labor force and the applicants?

A. Small employers and other small users are not obliged to keep such records. Section 15A(1). Employers with more than 100 employees and other users required to file EEO-1 *et seq.* reports should maintain records and other information upon which impact determinations could be made, because section 15A2 requires the maintenance of such information for "any of the groups for which records are called for by section 4B above." See also, Section 4A.

No user, regardless of size, is required to make adverse impact determinations for race or ethnic groups constituting less than 2% of the labor force and the applicants. See Question 16.

87. Q. Should information be maintained which identifies applicants and persons selected both by sex and by race or ethnic group?

A. Yes. Although the Federal agencies have decided not to require computations of adverse impact by subgroups (white males, black males, white females, black females—see Question 17), the Guidelines call for record keeping which allows identification of persons by sex, combined with race or ethnic group, so as to permit the identification of discriminatory practices on any such basis. Section 4A and 4B.

88. Q. How should a user collect data on race, sex or ethnic classifications for purposes of determining the impact of selection procedures?

A. The Guidelines have not specified any particular procedure, and the enforcement agencies will accept different procedures that capture the necessary information. Where applications are made in person, a user may maintain a log or applicant flow chart based upon visual observation, identifying the number of persons expressing an interest, by sex and by race or national origin; may in some circumstances rely upon personal knowledge of the user; or may rely upon self-identification. Where applications are not made in person and the applicants are not personally known to the employer, self-identification may be appropriate. Wherever a self-identification form is used, the employer should advise the applicant that identification by race, sex and national origin is sought, not for employment decisions, but for record-keeping in compliance with Federal law. Such self-identification forms should be kept separately from the application, and should not be a basis for employment decisions; and the applicants should be so advised. See Section 4B.

89. Q. What information should be included in documenting a validity study for purposes of these Guidelines?

A. Generally, reports of validity studies should contain all the information necessary to permit an enforcement agency to conclude whether a selection procedure has been validated. Information that is critical to this determination is denoted in Section 15 of the Guidelines by the word "(essential)".

Any reports completed after September 25, 1978, (the effective date of the Guidelines) which do not contain this information will be considered incomplete by the agencies unless there is good reason for not including the information. Users should therefore prepare validation reports according to the format of Section 15 of the Guidelines, and should carefully document the reasons if any of the information labeled "(essential)" is missing.

The major elements for all types of validation studies include the following:

When and where the study was conducted.

A description of the selection procedure, how it is used, and the results by race, sex, and ethnic group.

How the job was analyzed or reviewed and what information was obtained from this job analysis or review.

The evidence demonstrating that the selection procedure is related to the job. The nature of this evidence varies, depending upon the strategy used.

What alternative selection procedures and alternative methods of using the selection procedure were studied and the results of this study.

The name, address and telephone number of a contact person who can

provide further information about the study.

The documentation requirements for each validation strategy are set forth in detail in Section 15 B, C, D, E, F, and G. Among the requirements for each validity strategy are the following:

1. *Criterion-Related Validity*

A description of the criterion measures of job performance, how and why they were selected, and how they were used to evaluate employees.

A description of the sample used in the study, how it was selected, and the size of each race, sex, or ethnic group in it.

A description of the statistical methods used to determine whether scores on the selection procedure are related to scores on the criterion measures of job performance, and the results of these statistical calculations.

2. *Content Validity*

The content of the job, as identified from the job analysis.

The content of the selection procedure.

The evidence demonstrating that the content of the selection procedure is a representative sample of the content of the job.

3. *Construct Validity*

A definition of the construct and how it relates to other constructs in the psychological literature.

The evidence that the selection procedure measures the construct.

The evidence showing that the measure of the construct is related to work behaviors which involve the construct.

90. Q. Although the records called for under "Source Data", Section 15B(11) and section 15D(11), are not listed as "Essential", the Guidelines state that each user should maintain such records, and have them available upon request of a compliance agency. Are these records necessary? Does the absence of complete records preclude the further use of research data compiled prior to the issuance of the Guidelines?

A. The Guidelines require the maintenance of these records in some form "as a necessary part of the study." Section 15A(3)(c). However, such records need not be compiled or maintained in any specific format. The term "Essential" as used in the Guidelines refers to information considered essential to the validity report. Section 15A(3)(b). The Source Data records need not be included with reports of validation or other formal reports until and unless they are specifically requested by a compliance agency. The absence of complete records does not preclude use of research data based on those records that are available. Validation studies submitted to comply with the requirements of the Guidelines may be considered inadequate to the extent that important data are missing or there is evidence that the collected data are inaccurate.

[FR Doc. 79-6323 Filed 3-1-79; 8:45 am]

FEDERAL REGISTER

FRIDAY, MARCH 2, 1979

PART V

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development Services

Administration for Children, Youth and Families

■

CHILD ABUSE AND NEGLECT GRANTS PROGRAM

Fiscal Year 1979 State Grants

[4110-92-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development Services

Administration for Children, Youth and Families

[Notice No. 13.628-791]

CHILD ABUSE AND NEGLECT GRANTS PROGRAM

Fiscal Year 1979 State Grants

AGENCY: The Office of Human Development Services, DHEW.

SUBJECT: Announcement of Availability of Grant Funds for fiscal year 1979 Child Abuse and Neglect Grants Program—State Grants.

SUMMARY: The Administration for Children, Youth and Families announces that applications are being accepted for State grants for fiscal year 1979. This program is authorized by the Child Abuse Prevention and Treatment Act, Pub. L. 93-247, as amended. Regulations governing this program are published in the *Code of Federal Regulations* in 45 CFR Part 1340.

DATES: The closing date for receipt of applications is May 31, 1979.

SCOPE OF THIS NOTICE

The Child Abuse Prevention and Treatment Act (Pub. L. 93-247, as amended) in Section 4(b)(1) provides that the Secretary, through the National Center on Child Abuse and Neglect (NCCAN) is authorized to make grants to States.

This Notice identified NCCAN's fiscal year 1979 objectives and funding priorities for States desirous of making application for a State grant.

PROGRAM PURPOSE

The primary purpose of the Child Abuse and Neglect State Grants Program is to support the States in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs.

ELIGIBLE APPLICANTS

The Regulations implementing the legislation provide that "Whichever State office, agency or organization is designated by the Governor, may apply for financial assistance under section 4(b)(1) (of the Act) for the payment of reasonable and necessary expenses in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs." (45 CFR 1340.3-2(b)) In virtually all States the Governor has designated the agency which may apply for a State grant.

The term "State" as defined in Section 4(b)(1) of the Act includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territories of the Pacific.

In order for a State to qualify for a State grant, the State must meet the eligibility criteria stipulated in Appendix C.

SPECIAL CONDITIONS FOR FUNDING

States which have been awarded fiscal year 1978 State grants with special conditions must satisfy these conditions before making application for a fiscal year 1979 State grant. Grant applications from States which have not fully satisfied all of the special conditions by May 31, 1979, the deadline for making application, will not be considered for funding in fiscal year 1979.

However, any State with special conditions that has its legislature in session and a bill introduced to amend State law, which in turn would satisfy an eligibility requirement or any requirement, may request in writing by May 1, 1979 an extension of time for satisfying special conditions.

AVAILABLE FUNDS

Pub. L. 93-248, as amended, provides that 25 percent of the funds appropriated in fiscal year 1979 for the implementation of the Act will be used for making State grants. Based upon the fiscal year 1979 continuing resolution of $18.9 million for the National Center on Child Abuse and Neglect a total of $4,732,000 will be available for making State grants. Funds are allocated to the States on the basis of the following criteria: An amount of $25,000 plus an additional amount bearing the same ratio to the total amount made available for the purpose as the number of children under the age of eighteen in each State bears to the total number of children under eighteen in all States.

The tentative allocation for each State is provided in Appendix A to this Notice.

The actual allocation to each eligible State will be slightly higher. Some states will not apply or will be found ineligible and their cumulative allocations for FY 1979 will be distributed, by the above stated formula, to eligible States. As soon as the number of eligible States and States not applying for a grant can be determined, the allocations to eligible States can be finalized. However, States should not delay the submission of their application until the actual allocation is known. Instead, they should use the tentative allocations provided in Appendix A for preparing their application.

The Child Abuse and Neglect State Grant program is not a special revenue sharing program for the ongoing support and maintenance of local or State programs for the prevention and treatment of child abuse and neglect. Funds awarded under it should support specific developmental or start-up activities (usually, no longer than three years in duration for any one project activity) such as those described under "Program Objectives" in this Notice.

USE OF UNOBLIGATED BALANCE

Pub. L. 93-247, as amended, provides that any State which fails to obligate funds within 18 months after the award will receive a reduction in the next grant award in an amount equal to the unobligated balance unless the Secretary determines that extraordinary reasons justify the failure to so obligate.

PROGRAM OBJECTIVES

Applications are solicited from States for projects which reflect the following program objectives. They are not listed in any priority order.

1. Establishment of an organizationally visible State Protective Services unit responsible for policy and program direction. Such unit would provide a focal point for coordinating program activities; developing and promulgating staff manuals and procedural guides; enhancing resource development; convening child protection coordinating committees and conducting research and demonstration programs. These responsibilities are suggestive and not exhaustive.

2. Develop and strengthen hot lines, helplines, and parent self-help programs.

3. Prevention and correction of institutional child abuse and neglect.

Develop, publish, and promulgate regulations, operational procedures and guidelines for the identification, reporting and investigation of all incidents of child abuse and neglect in residential care facilities.

Establish a special unit for this purpose at the State level.

Support review commissions at the individual institution or groups of institutions.

Establish and implement a monitoring system.

4. Develop a training capacity within the State agency that includes a plan for meeting the training needs of those working in a child protective service system. The use of grant funds for training those providing direct service to clients is specifically excluded as Title XX and Title IV-B funds are available for this use.

5. Innovative prevention and treatment programs which hold promise for adding a new dimension of service

for abused and neglected children and their families. This does not include the on-going support or maintenance of current programs.

THE APPLICATION PROCESS

AVAILABILITY OF APPLICATION FORMS

The agency, designated by the Governor, that wishes to apply under this grant Notice may request application forms from the appropriate HEW Regional Office (See Appendix B). The application consists of two forms:

1. The Eligibility Statement (Form 627).
2. The Application for Federal Assistance (Form 424).

States which have never applied or who have previously been found ineligible for a State Child Abuse and Neglect grant are encouraged to apply at the earliest possible time but in no event by no later than May 31, 1979 as described in the section dealing with the Closing Date for receipt of Applications.

No applications will be considered unless both forms are completed according to the instructions provided.

A-95 CLEARINGHOUSE NOTICE

In compliance with the Department of Health, Education, and Welfare's implementation of Office of Management and Budget Circular No. A-95 Revised (interim procedures at 41 FR 3160, July 29, 1976), applicants who request grant support must, prior to submission of an application, notify both the State and Areawide A-95 Clearinghouse of the intent to apply for Federal assistance. If the application is for a Statewide project which does not affect areawide or local planning and programs, the notification need be sent only to the State Clearinghouse. Some State and Area Clearinghouses provide their own forms on which such information is to be submitted. Applicants should contact the appropriate State Clearinghouse (listed at 42 FR 2210, January 10, 1977) for information on how they can meet the A-95 requirements.

CRITERIA FOR REVIEW AND EVALUATION

Criteria utilzied in the review process are the eligibility requirements contained in 45 CFR 1340.3-3. (See Appendix C) The Regional Office has been delegated responsibility for the review and approval of the Eligibility Statement and the Application for Federal Assistance.

Eligible applicants submitting applications are notified through issuance of a Notice of Grant Awarded which sets forth the amount of funds awarded, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, and the total period for which support is contemplated.

APPLICATION SUBMISSION

In order to be considered for a grant under the State Child Abuse and Neglect Grants Program, an application must be submitted on the forms and in the manner described above. The application must be signed by an individual authorized to act for the applicant agency and to assume for the agency the obligations imposed by the terms and conditions of the grant award, including the regulations of the Program. One signed original and two copies of the grant application, including all attachments, are required.

Applications sent by mail should be addressed to the appropriate Regional Office. Addresses will be provided in the Application Kits.

CLOSING DATE FOR RECEIPT OF APPLICATIONS

The closing date for receipt of applications under this Notice is May 31, 1979, except as otherwise stated in the section "Special Condition for Funding." Applications received after the close of business on May 31, 1979, will be considered ineligible and will not be reviewed and evaluated.

An application sent by mail will be considered to be received on time by the HEW Regional Office if:

1. The application was sent by registered or certified mail not later than May 31, 1979, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service.

2. An application delivered by hand must be delivered to the appropriate HEW Regional Office before close of business on May 31, 1979. As the Regional Offices have different hours of operation, applicants may wish to contact the Regional Office for the time of day that the office closes.

(Catalog of Federal Domestic Assistance Program Number 13.628, Child Development—Child Abuse)

Dated: February 9, 1979.

BLANDINA C. RAMERIZ,
Commissioner for Children, Youth and Families.

Approved: February 23, 1979.

ARABELLA MARTINEZ,
Assistant Secretary for Human Development Services.

APPENDIX A

[Tentative Allocations]

REGION I

Connecticut	$68,425
Maine	41,577
Massachusetts	105,647
New Hampshire	37,879
Rhode Island	38,081
Vermont	32,458

APPENDIX A—Continued

[Tentative Allocations]

REGION II

New Jersey	130,279
New York	277,035
Puerto Rico	89,803
Virgin Islands	26,926

REGION III

Delaware	33,725
Dist. of Col	34,232
Maryland	85,954
Pennsylvania	183,840
Virginia	100,695
West Virginia	52,621

REGION IV

Alabama	82,213
Florida	138,537
Georgia	105,711
Kentucky	78,355
Mississippi	66,248
North Carolina	108,801
South Carolina	71,770
Tennessee	89,145

REGION V

Illinois	194,058
Indiana	107,231
Michigan	167,513
Minnesota	85,599
Ohio	185,851
Wisconsin	95,630

REGION VI

Arkansas	57,991
Louisiana	91,425
New Mexico	45,630
Oklahoma	65,451
Texas	230,937

REGION VII

Iowa	67,819
Kansas	58,295
Missouri	94,414
Nebraska	48,467

REGION VIII

Colorado	65,184
Montana	37,018
North Dakota	35,195
South Dakota	35,752
Utah	49,278
Wyoming	31,547

REGION IX

No. Marianas	25,443
American Samoa	25,793
Arizona	62,551
California	341,574
Guam	27,323
Hawaii	39,146
Nevada	34,941
Trust Territory	28,199

REGION X

Alaska	32,662
Idaho	39,501
Oregon	59,612
Washington	78,963
Totals	4,732,000

APPENDIX B

REGIONAL PROGRAM DIRECTORS, ACYF

Region I

Roy Fleischer, Acting Regional Program Director, Administration for Children, Youth and Families, Room 2000, JFK Federal Building, Government Center, Boston, Massachusetts 02203, FTS 223-6450 (617) 223-6450.

Region II

Elaine Danavall, Acting Regional Program Director, Administration for Children,

Youth and Families, Room 4149, Federal Building, New York, New York 10007, FTS 264-2974 (212) 264-2974.

Region III

Fred Digby, Acting Regional Program Director, Administration for Children, Youth and Families, P.O. Box 13716—3535 Market Street, Philadelphia, Pennsylvania 19101, FTS 596-6763 (215) 596-6776.

Region IV

John Jordan, Acting Regional Program Director, Administration for Children, Youth and Families, 101 Marietta Tower, Suite 903, Atlanta, Georgia 30323, FTS 242-2134 (404) 221-2134.

Region V

Hilton Baines, Acting Regional Program Director, Administration for Children, Youth and Families, 300 South Wacker Drive, 15th Floor, Chicago, Illinois 60606, FTS 353-1781 (312) 353-6503.

Region VI

David Chapa, Acting Regional Program Director, Administration for Children, Youth and Families, 1200 Main Tower Bldg., Dallas, TX 75205, FTS 729-1981 (214) 767-2976.

Region VII

Richard Rosenthal, Acting Regional Program Director, Administration for Children, Youth and Families, 601 E. 12th Street, 3rd Floor, Federal Bldg., Kansas City, Missouri 64106, FTS 758-5401 (816) 374-5401.

Region VIII

John Garcia, Acting Regional Program Director, Administration for Children, Youth and Families, 1961 Stout Street, Denver, Colorado 80294, FTS 327-3106 (303) 837-3106.

Region IX

Gerald Hasting, Acting Regional Program Director, Administration for Children, Youth and Families, 50 United Nations Plaza, Rm. 144, San Francisco, California 94102, FTS 556-6153 (415) 556-6153.

Region X

William Hayden, Acting Regional Program Director, Administration for Children, Youth and Families, MS 622, Arcade Plaza Bldg., 1321 Second Ave., Seattle, Washington 98101, FTS 399-0838 (206) 442-0838.

APPENDIX C

§ 1340.3-3 Qualification for assistance.

(a) The Act enumerates ten elements of a comprehensive system to prevent and treat child abuse and neglect which a State must have in order to qualify for assistance under section 4(b)(1). The enactment of identical laws and procedures in the States is not necessary. Rather, as its purpose, the Act seeks to insure that all States receiving assistance under this subsection (in meeting the ten requirements) must provide what may be grouped into four fundamental child protective capabilities: (1) Detection through third party reporting of children in danger, including mandatory and permissive reporting of suspected child abuse and neglect; (2) child protective services to provide noncriminal investigations for the verification of reports, to provide immediate protection of children through such means as protective custody, and to provide rehabilitative and ameliorative services; (3) juvenile or family court action to remove a child or to impose treatment services; and (4) law enforcement investigations and criminal court prosecution, when appropriate.

(b) Similarly, it is not necessary for States to adopt language for the definition of "child abuse and neglect" identical to that used in the Act. A State definition which is the same in substance as the one set forth in this part will be sufficient. In addition, nothing in this part is intended to prevent a State from further elaborating on the definition or from providing additional grounds to consider a child abused or neglected. This part takes this approach in recognition of the need to allow and encourage flexibility and innovation in light of the diverse local conditions found from State to State and community to community.

(c) Finally, in order to facilitate compliance, this part makes a distinction between requirements that can be satisfied by a specific State law and those that can be satisfied by a legally authorized and legally binding administrative procedure, if certified by the State's Attorney General.

(d) In order for a State to qualify for assistance under section 4(b)(1) of the Act, the State shall satisfy each of the following ten requirements:

(1) The State must have in effect a child abuse and neglect law which includes provisions for immunity for all persons reporting, whether mandated by law or not, instances of known or reasonably suspected child abuse and neglect, from civil or criminal prosecution under any State or local law, arising out of such reporting. In the absence of a specific statutory provision in an existing child abuse and neglect reporting law, this requirement may be satisfied, but only until July 1, 1975, or the close of the next session of the State legislature, whichever is later, by a legal opinion of the State's Attorney General holding that such immunity exists under State law.

(2)(i) The State must provide for the reporting of known or suspected instances of child abuse and neglect. This requirement shall be deemed satisfied if a State requires specified persons by law, and has a law or administrative procedure which requires, allows, or encourages all other citizens, to report known or suspected instances of child abuse and neglect to one or more properly constituted authorities with the power and responsiblity to perform an investigation and take necessary ameliorative and protective steps as required in paragraph (3). A properly constituted authority may include the police, the juvenue court or any agency thereof, or a legally mandated, public or private child protective agency; *Provided*, However, that a properly constituted authority must be an agency other than the agency, institution or facility involved in the acts or omissions, if the report of child abuse and neglect involves the acts or omissions of a public or private agency or other institution or facility.

(ii) In the absence of a specific statute, the requirements of this subsection may be satisfied by an opinion of the State Attorney General holding that the State administrative procedures in this regard are legally binding.

(3)(i) A State must provide that upon the receipt of a report of known or suspected instance of child abuse or neglect an appropriate investigation by a properly constituted authority shall be initiated promptly to substantiate the accuracy of the report. Such investigation may include contact with central registers, field investigations and interviews, home visits, consultation with other agencies, medical examinations, and psychological and social evaluations.

(ii) The State must provide further that, upon a finding of abuse or neglect, immediate steps, as required by law and/or administrative procedure, shall be taken to protect the health and welfare of the abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect. Such steps may include multidisciplinary teams, instruction in education for parenthood, protective and preventive social counseling, foster care, emergency caretaker service, emergency homemaker service emergency shelter care, emergency medical service, and, if appropriate, criminal court or juvenile court action, in order to protect the child and help strengthen the family, help the parents in their child rearing responsibilities, and if necessary, remove the child from a dangerous situation.

(4) The State must demonstrate that there are in effect throughout the State, in connection with the enforcement of child abuse and neglect laws and with the reporting of suspected instances of child abuse and neglect, such administrative procedures, such personnel trained in child abuse and neglect prevention and treatment, such training procedures, such institutional and other facilities (public and private), and such related multidisciplinary programs and services as may be necessary or appropriate to assure that the State has operational procedures and capabilities sufficient to deal effectively with child abuse and neglect cases in the State. Such operational procedures and capabilities shall include: provision for receipt, investigation and verification of reports; provision for the determination of treatment or ameliorative social service and medical needs; provision of such services; and, when necessary, resort to criminal or juvenile court.

(5) The State must provide for methods to preserve the confidentiality of all records concerning reports of child abuse and neglect in order to protect the rights of the child, his parents or guardians. This section shall be satisfied only if a State has a law which makes such records confidential and which makes any person who permits or encourages the unauthorized dissemination of their contents guilty of a crime. Such law may allow access to such records but only to the following agencies and persons: (i) A legally mandated, public or private child protective agency investigating a report of known or suspected child abuse or neglect or treating a child or family which is the subject of a report or record; (ii) a police or other law enforcement agency investigating a report of known or suspected child abuse or neglect; (iii) a physician who has before him a child whom he reasonably suspects may be abused or neglected; (iv) a person legally authorized to place a child in protective custody when such person has before him a child whom he reasonably suspects may be abused or neglected and such person requires the information in the report or record in order to determine whether to place the child in protective custody; (v) an agency having the legal responsibility or authorization to care for, treat, or supervise a

child who is the subject of a report or record, or a parent, guardian, or other person who is responsible for the child's welfare; (vi) any person named in the report or record who is alleged to be abused or neglected; if the person named in the report or record is a minor or is otherwise incompetent, his guardian ad litem; (vii) a parent, guardian, or other person responsible for the welfare of a child named in a report or record, with protection for the identity of reporters and other appropriate persons; (viii) a court, upon its finding that access to such records may be necessary for determination of an issue before such court, but such access shall be limited to in camera inspection, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it; (ix) a grand jury upon its determination that access to such records is necessary in the conduct of its official business; (x) any appropriate State or local official responsible for the child protective service or legislation carrying out his official functions; (xi) any person engaged in a bona fide research purpose, provided, however, that no information identifying the subjects of the report shall be made available to the researcher unless it is absolutely essential to the research purpose and the appropriate State official gives prior approval. Nothing in these regulations is intended to affect a State's laws or procedures concerning the confidentiality of its criminal court and its criminal justice system.

(6) The State must provide for the cooperation of law enforcement officials, courts of competent jurisdiction, and all appropriate State agencies providing human services in relation to preventing, identifying and treating child abuse and neglect. Such cooperation may include joint consultation and services, joint planning, joint case management, joint public education and information service, utilization of each other's facilities, and joint staff and other training.

(7) The State must provide that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem shall be appointed to represent the child in such proceedings. The requirement of this clause may be satisfied by a State law or by a legal opinion of the State's Attorney General holding that such appointments can be made, and by a statement from the Governor that such appointments are made, in all cases. Such guardian ad litem need not be an attorney; however, such representative may be an attorney charged with the presentation in a judicial proceeding of the evidence alleged to amount to the abuse and neglect, so long as his legal responsibility includes representing the rights, interests, welfare, and well-being of the child; where such appointments are made, the legal opinion of the State Attorney General must specify that such attorney has said legal responsibility.

(8) The State must provide that the aggregate of State support for programs or projects related to child abuse and neglect assisted by State funds shall not be reduced below the level provided during Federal fiscal year 1973, and set forth policies and procedures designed to assure that Federal funds made available under this Act for any fiscal year will be so used as to supplement and, to the extent practicable, increase the level of State funds which would, in the absence of Federal funds, be available for such programs and projects.

(9) The State must provide for dissemination of information to the general public with respect to the problem of child abuse and neglect and the facilities and the prevention and treatment methods available to combat instances of child abuse and neglect; and

(10) To the extent feasible, the State must insure that parental organizations combating child abuse and neglect, as recognized by the State, receive preferential treatment.

In addition, whenever the term "child abuse and neglect" is used (laws, administrative procedures, etc.) it must satisfy all elements of the definition expressed in 45 CFR 1340.1-2(b) of the Regulations which is Question 1 of the Eligibility Statement (HEW Form 627).

[FR Doc. 79-6239 Filed 3-1-79;8:45 am]

Advance Orders are now Being Accepted for Delivery in About 6 Weeks

CODE OF FEDERAL REGULATIONS

(Revised as of October 1, 1978)

Quantity	Volume	Price	Amount
_____	Title 42—Public Health (Parts 1 to 399)	$6.00	$_____
_____	Title 45—Public Welfare (Parts 150 to 199)	5.25	_____
_____	Title 45—Public Welfare (Parts 200 to 499)	3.50	_____
_____	Title 46—Shipping (Parts 1 to 29)	3.25	_____
		Total Order	$_____

[A Cumulative checklist of CFR issuances for 1978 appears in the first issue of the Federal Register each month under Title 1. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected)]

PLEASE DO NOT DETACH

MAIL ORDER FORM To:

Superintendent of Documents, Government Printing Office, Washington, D.C. 20402

Enclosed find $..... (check or money order) or charge to my Deposit Account No. .....

Please send me ..... copies of:

PLEASE FILL IN MAILING LABEL BELOW

Name _____

Street address _____

City and State _____ ZIP Code _____

FOR USE OF SUPT. DOCS.
____Enclosed____
To be mailed later____
____Subscription____
Refund____
Postage____
Foreign Handling____

FOR PROMPT SHIPMENT, PLEASE PRINT OR TYPE ADDRESS ON LABEL BELOW, INCLUDING YOUR ZIP CODE

SUPERINTENDENT OF DOCUMENTS
U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON, D.C. 20402

OFFICIAL BUSINESS

POSTAGE AND FEES PAID
U.S. GOVERNMENT PRINTING OFFICE
375
SPECIAL FOURTH-CLASS RATE BOOK

Name _____

Street address _____

City and State _____ ZIP Code _____